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# TITLE 10. LAW

**TITLE 10. LAW**

**CHAPTER 1. DEPARTMENT OF LAW - ATTORNEY GENERAL'S OFFICE**

(Authority: A.R.S. § 41-192 and 41-771)

**ARTICLE 1. DISMISSAL**

Section



**ARTICLE 2. REPEALED**

*Article 2, consisting of Section R10-1-201, repealed effective November 2, 1995 (Supp. 95-4).*



**ARTICLE 1. DISMISSAL**

**R10-1-101. Definitions**

In this Article, unless the context otherwise requires:

1. "Appellant" means any Assistant Attorney General who has filed an appeal from a dismissal by the Attorney General.
2. "Assistant Attorney General" means any attorney who has not been assigned permanent responsibility for directly supervising other attorneys.
3. "Personnel Review Committee" means a three-member committee which shall review an appeal by an Assistant Attorney General of his or her dismissal and render a decision on such appeal.
4. "Personnel Review Panel" means a panel of five members of the State Bar of Arizona appointed by the Attorney General not later than the 15th of January of each year from which the Personnel Review Committee is selected.

**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4).

**R10-1-102. Application**

**A.** This Article shall apply to all Assistant Attorneys General hired or transferred into any vacant position by the Department of Law Attorney General on or after July 27, 1983, and to all Assistant Attorneys General employed before July 27, 1983, who have waived their rights under the State Merit System, but before October 1, 1984, and shall not apply to any Assistant Attorney General so hired or transferred after October 1, 1984.

**B.** The Attorney General may, in his discretion, extend the application of this Article to any Assistant Attorney General hired or transferred into any vacant position on or after October 1, 1984, and who either has been employed by the Attorney General for more than five years or whose responsibilities, experience, and performance, in the opinion of the Attorney General, justify its application.

**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective Sept. 20, 1984 (Supp. 84-5).

**R10-1-103. Probationary period for Assistant Attorneys General**

All Assistant Attorneys General shall serve a probationary period of two years. An Assistant Attorney General may be dismissed by the Attorney General without cause and without the right to a hearing at any time during his or her two-year probationary period.

**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4).

**R10-1-104. Dismissal of Assistant Attorneys General for cause**

**A.** After serving his or her two-year probationary period, an Assistant Attorney General may be dismissed only for cause.

**B.** Cause for dismissal shall include the following:

1. Fraud or misrepresentation in securing appointment.
2. Incompetency -- meaning the lack of ability or fitness to discharge the required duties.
3. Inefficiency -- meaning performance below the level of others performing like duties under similar conditions; or the incapacity or indisposition to perform one's duties.
4. Neglect of duty.
5. Insubordination -- meaning disrespectful or contumacious conduct toward a supervisor; or a knowing disregard of express or implied directions; or a refusal to obey a lawful and ethical order issued by a person authorized to issue such order.
6. Dishonesty.
7. Drunkenness on duty.
8. Any unlawful use of narcotics or habit-forming drugs, or any use of or addiction to narcotics or habit-forming drugs which impairs job performance.
9. Conviction of a felony, or conviction of a misdemeanor an element of which is intentional, knowing or reckless conduct. A plea or verdict of guilty to a charge of a felony, or any misdemeanor an element of which is intentional, knowing or reckless conduct is deemed to be a conviction for purposes of this Section.
10. Discourteous treatment of the public or other public employees.
11. Improper political activity.
12. Misuse or unauthorized use of state property.
13. Conduct either during or outside duty hours which is of such a nature that it causes discredit to the Attorney General's Office.
14. Any conduct which is inconsistent, incompatible or in conflict with one's official duties as an Assistant Attorney General.
15. Failure to discharge one's responsibilities as an Assistant Attorney General in a timely manner as directed by supervisors.
16. Failure or refusal to comply with office policies established by the Attorney General.
17. Use or attempted use of one's official position for private advantage.
18. Any other action or pattern of activity that constitutes cause as a matter of law.

**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4). Editorial correction, subsection (B), paragraph (8) "lawful" should

read "unlawful" as filed for adoption effective July 27, 1983 (Supp. 85-1).

**R10-1-105. Dismissal procedure of Assistant Attorneys General**

The Attorney General may dismiss any Assistant Attorney General pursuant to A.A.C. R10-1-104, provided that:

1. On or before the effective date of any dismissal of an Assistant Attorney General, the attorney to be dismissed shall be provided with a written statement setting forth the basis for the dismissal in sufficient detail so as to inform him or her of the specific reason or reasons for such action.
2. In the event of an appeal by any Assistant Attorney General of a dismissal, the Attorney General shall provide a copy of the statement setting forth the basis for such dismissal and a copy of the written appeal by the Appellant to the Personnel Review Committee appointed to review such dismissal.

**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4).

**R10-1-106. Hearing procedure**

**A.** An Assistant Attorney General dismissed pursuant to this Article may appeal such dismissal by filing a written appeal with the Attorney General no later than ten days after his or her notice of dismissal. The appeal shall state, in sufficient detail, specific responses to the cause or causes upon which the dismissal was based.

**B.** The Attorney General may file a written response to the appeal, which shall be filed within ten days from the receipt of the appeal. A copy of the response shall be sent to the Appellant.

**C.** Not later than the 15th of January of each year, the Attorney General shall appoint a Personnel Review Panel consisting of five lawyers who are members of the State Bar of Arizona. At least two members of the Panel shall have public law experience and at least one member shall have judicial experience. In the event of an appeal by an Assistant Attorney General of his or her dismissal, the Attorney General and the Appellant shall each be entitled to strike one member of the Personnel Review Panel. The three remaining members of the panel not stricken by either the Attorney General or the Appellant shall serve as the Personnel Review Committee for such appeal and shall render a decision as provided in this rule.

**D.** The Personnel Review Committee shall conduct a hearing on the appeal within 30 days after the appeal is filed unless the time is extended by mutual consent of the Appellant and the Attorney General. The hearing shall be informally conducted with technical rules of evidence not applying to the proceeding. Both parties may present witnesses and may cross-examine any witnesses called by the other party. The Committee, in its discretion, may call additional witnesses. Both parties shall be given ten days advance notice of the hearing. Not less than five days prior to the hearing each party shall provide the Committee and the opposing party with a list of all witnesses to be presented. All testimony given before the Committee shall be recorded and transcribed by a court reporter and entered as a part of the official record.

**E.** Either the Appellant or the Attorney General at his own expense may take the deposition of any witness who does not reside within the county or within 100 miles of the place where the hearing is to be held, is out of the state, or is too infirm to attend the hearing.

**F.** The Personnel Review Committee shall render its decision within 20 days after the conclusion of the hearing and shall at the same time send a copy of its decision to the Attorney General and the Appellant. The Committee shall prepare an official record of the hearing, including all testimony, all exhibits, and all other relevant documents.

**G.** The Personnel Review Committee may, with the consent of both parties, waive the hearing and render its decision based solely upon the written evidence.

**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4).

**R10-1-107. Rehearing**

**A.** Either party to an appeal by an Assistant Attorney General from his or her dismissal who is aggrieved by a decision rendered in such appeal may file with the Personnel Review Committee, not later than ten days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor.

**B.** A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Personnel Review Committee. A response may be filed within ten days after service of such motion or amended motion by any other party. The Personnel Review Committee may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

**C.** A rehearing of the decision may be granted on any of the following grounds materially affecting the moving party's rights:

1. Irregularity in the proceedings before the Personnel Review Committee or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
2. Misconduct of the Personnel Review Committee or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing;
7. A decision not justified by the evidence or contrary to law.

**D.** The Personnel Review Committee may affirm or modify the decision or grant a rehearing as to all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.

**E.** The Personnel Review Committee, within the time for filing a motion for rehearing under this rule, may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Personnel Review Committee may grant a motion for rehearing, timely served, for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the ground therefor.

**F.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. The opposing party may within ten days after such service serve opposing affidavits.

**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4).

**ARTICLE 2. REPEALED**

**R10-1-201. Repealed**

**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4). Amended

effective May 19, 1988 (Supp. 88-2). Repealed effective November 2, 1995 (Supp. 95-2).

**TITLE 10. LAW**

**CHAPTER 2. ATTORNEY GENERAL - FAIR HOUSING**

(Authority: A.R.S. §§ 41-1491.04 and 41-1491.08)

**ARTICLE 1. FAIR HOUSING**

*Article 1, consisting of Sections R10-2-101 through R10-2-124, adopted effective December 2, 1994 (Supp. 94-4).*

Section



**ARTICLE 1. FAIR HOUSING**

**R10-2-101. Definitions**

**A.** Words and phrases defined in A.R.S. §§ 41-1491.04, 41-1491.19, and 41-1491.20, when used in this Article, have the defined meaning.

**B.** Other definitions:

1. "Accessible", when used with respect to the public and common-use areas of a building containing covered multifamily dwellings, means that the public or common-use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible.
2. "Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes include parking access aisles, curb ramps, walks, ramps, and lifts. A route that complies with 24 CFR 40 (1993), and no further amendments or additions, incorporated herein by reference and on file with the Office of the Secretary of State and at the Offices of the Attorney General, Civil Rights Division, or a comparable standard is an "accessible route".
3. "Act" means the Fair Housing Act or A.R.S. Title 41, Chapter 9, Article 7.
4. "Appraisal" means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing, or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.
5. "Attorney General" means the Attorney General of the state of Arizona, the Civil Rights Section or Division of the Arizona Attorney General's Office, or any person or persons the Attorney General may delegate to act on his or her behalf.
6. "Broker" or "Agent" means any person authorized to act on behalf of another person regarding any matter related to the administration, sale, rental, or lease of dwellings. Acts may include offers, solicitations, contracts, or any residential real estate-related transactions.
7. "Building" means a structure, facility, or portion of a structure or facility that contains or serves one or more dwelling units.
8. "Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to parking and passenger loading zones, or to public streets or sidewalks, if available.
9. "Civil Rights Section" means the Civil Rights Section or Division of the Arizona Attorney General's Office.
10. "Common-use areas" means rooms, spaces, or elements inside or outside a building that are made available for the use of residents of a building or their guests. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas, parking lots, and passageways among and between buildings.
11. "Drug" means a controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812 (1994)), and no further amendments or additions, incorporated herein by reference and on file with the Office of the Secretary of State and the Arizona Attorney General, Civil Rights Division.
12. "Dwelling unit" means a single unit of residence for a household of one or more persons.
13. "Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering.
14. "Exterior" means all areas of the premises outside of an individual dwelling unit.
15. "First occupancy" means occupancy of a building that has never before been used for any purpose.
16. "Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

17. "Handicap" means:
    a. With respect to an individual:
        i. A physical or mental impairment that substantially limits one or more of the major life activities of the individual;
        ii. A record of the impairment; or
        iii. Being regarded as having such an impairment.
    b. Nothing in this Article or the Act excludes from the definition of a "handicap" an individual who:
        i. Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;
        ii. Is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs; or
        iii. Is erroneously regarded as engaging in the illegal use of drugs but is not doing so.
    c. As used in this definition:
        i. "Physical or mental impairment" includes:
            (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
            (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical and mental impairment" includes such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.
        ii. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
        iii. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
        iv. "Is regarded as having an impairment" means:
            (1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such limitation;
            (2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such an impairment; or
            (3) Has none of the impairments defined in subsection (c)(i) of this definition but is treated by another person as having such an impairment.
18. "Illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812) (1994) and no further additions or amendments, incorporated herein by reference and on file with the Office of the Secretary of State and the Arizona Attorney General, Civil Rights Division. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act (21 U.S.C. 801 et seq.) (1994) and no further additions or amendments, incorporated herein by reference and on file with the Office of the Secretary of State and the Arizona Attorney General, Civil Rights Division.
19. "Interior" means the spaces, parts, components, or elements of an individual dwelling unit.
20. "Modifications" means any change to the public or common-use areas of a building or any change to a dwelling unit.
21. "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common-use areas of a building.
22. "Public-use Areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.
23. "Receipt of notice" occurs when service of notice is completed.
24. "Service of notice" means service instituted by the Attorney General in accordance with A.R.S. § 41-1403 or Rule 4 of the Rules of Civil Procedure.
25. "Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-102. Fifty-five or Over Housing**

**A.** A housing facility shall be recognized as meeting the definition of "housing for older persons", and thus achieving exemption status, if it meets the standards set forth in A.R.S. § 41-1491.04 and this Section.

**B.** "Significant facilities and services specifically designed to meet the physical or social needs of older persons", as used in A.R.S. § 41-1491.04(C), include, among others, social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care programs, congregate dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them. The housing facility does not need to have all of these features to qualify for the exemption under this subsection; or

**C.** The housing facility can still meet the requirements of A.R.S. § 41-1491.04, even if it is not practicable to provide significant services and facilities designed to meet the physical or social needs of older persons, as long as the owner or manager of the housing facility demonstrates through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements:

1. Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that the services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is impractical;
2. The amount of rent charged, if the dwelling is rented, or the price of the dwelling, if it is offered for sale;
3. The income range of the residents of the housing facility;
4. The demand for housing for older persons in the relevant geographic area;
5. The range of housing choices for older persons within the relevant geographic area;
6. The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area, then the housing facility does not meet the requirements of this paragraph; and
7. The vacancy rate of the housing facility.

**D.** The following factors are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of A.R.S. § 41-1491.04(C)(3):
1. The manner in which the housing facility is described to prospective residents;
2. The nature of any advertising designed to attract prospective residents;
3. Age verification procedures;
4. Lease provisions;
5. Written rules and regulations; and
6. Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

**E.** A housing facility will not be denied or lose its recognition as "housing for older persons" solely because:
1. There are unoccupied units, provided that at least 80% of such unoccupied units are reserved for occupancy by at least one person 55 years of age or over; or
2. There are units occupied by employees of the housing facility (and family members residing in the same unit) who are under 55 years of age, provided they perform substantial duties directly related to the management or maintenance of the housing.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-103. Discrimination in Terms, Conditions, or Privileges in Services or Facilities**

**A.** Conduct prohibited by A.R.S. §§ 41-1491.14(A) and 41-1491.19(A) includes:
1. Failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap, familial status, or national origin.
2. Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, or national origin.
3. Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, or national origin.
4. Using different qualification criteria or applications, sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis, or sale or rental approval procedures or other requirements because of race, color, religion, sex, handicap, familial status, or national origin.
5. Evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.

**B.** Conduct prohibited by A.R.S. § 41-1491.14(B) and 41-1491.19(B) includes:
1. Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits, and the terms of a lease, and those relating to down payment and closing requirements, because of race, color, religion, sex, handicap, familial status, or national origin.
2. Failing or delaying maintenance or repairs of dwellings that are rented or are for sale or rent because of race, color, religion, sex, handicap, familial status, or national origin.
3. Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, or national origin.
4. Limiting the use of privileges, services, or facilities associated with a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of an owner or tenant or a person associated with the owner or tenant.
5. Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-104. Other Prohibited Sale and Rental Conduct**

**A.** It is unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying, or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood, or development.

**B.** It is unlawful, because of race, color, religion, sex, handicap, familial status, or national origin to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons. This prohibition includes:
1. Discharging or taking other adverse action against an employee, broker, or agent because the person refused to participate in a discriminatory housing practice;
2. Employing codes or other devices to segregate or reject applicants, purchasers, or renters; refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, or national origin; or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origin;
3. Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, or national origin; and
4. Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin.

**C.** Conduct prohibited by A.R.S. § 41-1491.16, generally referred to as unlawful steering practices, includes:
1. Discouraging any person from inspecting, purchasing, or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, or because of the race, color, religion, sex, handicap, familial status, or national origin of persons in community, neighborhood, or development;
2. Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin by exaggerating drawbacks or failing to inform of desirable features of a dwelling or of a community, neighborhood, or development;
3. Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood, or development because of race, color, religion, sex, handicap, familial status, or national origin; and
4. Assigning any person to a particular section of a community neighborhood, or development, or to a particular floor of a building because of race, color, religion, sex, handicap, familial status, or national origin.

**D.** It is unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental. Prohibited actions under this Section include:
1. Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, because of race, color, religion, sex, handicap, familial status, or national origin;
2. Representing that covenants or other deed, trust, or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin preclude the sale or rental of a dwelling to a person;
3. Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin;
4. Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale, or rental because of race, color, religion, sex, handicap, familial status, or national origin; and
5. Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless or whether such person is actually seeking housing, because of race, color, religion, sex, handicap, familial status, or national origin.

**Historical Note**
Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-105. Blockbusting**

**A.** Conduct prohibited by A.R.S. § 41-1491.17 includes:
1. Engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental; and
2. Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, handicap, familial status, or national origin, can or will result in undesirable consequences for the project, neighborhood, or community such as lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

**B.** In establishing a discriminatory housing practice under this Section, it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activities.

**Historical Note**
Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-106. Interference, Coercion, or Intimidation**

Conduct prohibited by A.R.S. § 41-1491.18 includes the following:
1. Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin;
2. Threatening, intimidating, or interfering with a person in the enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of the person, or of visitors or associates of the person;
3. Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, handicap, familial status, or national origin of that person or of any person associated with that person;
4. Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging other persons to exercise, rights granted or protected by the Act; and
5. Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act.

**Historical Note**
Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-107. General Prohibitions Against Discrimination Because of Handicap**

It is unlawful under A.R.S. § 41-1491.19 to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in a dwelling after it is sold, rented, or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. Neither the Act nor this Article prohibits the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:
1. Inquiry into an applicant's ability to meet the bona fide requirements of ownership or tenancy;
2. Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;
3. Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;
4. Inquiring whether an applicant for a dwelling is a current illegal drug abuser or addict of a controlled substance; and
5. Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

**Historical Note**
Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-108. Reasonable Modifications of Existing Premises**

**A.** The landlord may not increase for handicapped persons the customarily required security deposit; however, to ensure that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest-bearing escrow account, over a reasonable period, an amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

**B.** A landlord may condition permission for a modification on the renter providing a description of the proposed modifications as well as assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

**C.** When an interior modification will not interfere with the landlord's, or a subsequent tenant's use and enjoyment of the premises, the landlord shall not require the tenant to remove the alteration at the end of the lease, or condition approval of a modification on the tenant paying for the restoration of the property at the conclusion of the lease.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-109. Design and Construction Requirements**

**A.** Covered multifamily dwellings for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this Section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if the dwelling is occupied by that date, or if the certificate of occupancy was issued, or a building permit or renewal for the dwelling was issued by a state, county, or local government before March 13, 1991. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who owns or contracted for the construction of the housing facility.

**B.** All covered multifamily dwellings for first occupancy after March 13, 1991, with a building entrance on an accessible route shall have:

1. Public and common-use areas, if any, that are readily accessible to and usable by handicapped persons;
2. All doors into and throughout the premises that are sufficiently wide to allow passage of handicapped persons in wheelchairs; and
3. The following features of adaptable design:
   a. An accessible route into and through the covered dwelling unit;
   b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
   c. Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall, and shower seat where such facilities are provided; and
   d. Kitchens and bathrooms that permit an individual in a wheelchair to maneuver about the space.

**C.** Compliance with the applicable requirements of 24 CFR 40 (1993), incorporated by reference and with no additions or amendments, satisfies the requirements of paragraph (B)(3).

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-110. Discrimination in the Making of Loans and in the Provision of Other Financial Assistance**

**A.** Conduct prohibited by A.R.S. § 41-1491.20 includes:

1. Failing or refusing to provide to any person in connection with a residential real estate-related transaction information regarding the availability of loans or other financial assistance, application requirements, procedures, or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin;
2. Purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, handicap, familial status, or national origin of persons in such neighborhoods or communities;
3. Pooling or packaging loans or other debts or securities which relate to, or which are secured by, dwellings differently because of race, color, religion, sex, handicap, familial status, or national origin; and
4. Imposing or using different terms or conditions in the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

**B.** It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair, or maintenance of dwellings, or which are secured by residential real estate, to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, or national origin. Unlawful conduct includes:

1. Using different policies, practices, or procedures in evaluating or in determining credit-worthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin; and
2. Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration, or other terms for a loan or other financial assistance for a dwelling which is secured by residential real estate, because of race, color, religion, sex, handicap, familial status, or national origin.

**C.** Notwithstanding A.R.S. § 41-1491.05, it is unlawful to use an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin.

**D.** It is unlawful for any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair, or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, or national origin.

**E.** This Section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, including requirements of federal law, relating to a transaction's financial security or to protection against default or reduction of the

value of the security. A business necessity connotes an irresistible demand, and not only fosters the above goals but is essential to them. This provision does not preclude necessary considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status, or national origin.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-111. Discrimination in the Provision of Brokerage Services**

Conduct prohibited by A.R.S. § 41-1491.21 includes:

1. Setting different fees for access to or membership in a multiple listing service because of race, color, religion, sex, handicap, familial status, or national origin;
2. Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, or national origin;
3. Imposing different standards or criteria for membership in a real estate sales or rental organization because of race, color, religion, sex, handicap, familial status, or national origin; and
4. Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, because of race, color, religion, sex, handicap, familial status, or national origin.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-112. Discrimination in Advertising**

**A.** The prohibitions in this Section apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, or any other documents used with respect to the sale or rental of a dwelling.

**B.** Discriminatory notices, statements, and advertisements include:

1. Using words, phrases, photographs, illustrations, symbols, or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, or national origin;
2. Expressing to agents, brokers, employees, prospective sellers or renters, or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, handicap, familial status, or national origin of such persons;
3. Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, or national origin;
4. Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, or national origin.

**C.** The Attorney General shall review the following criteria in evaluating complaints alleging discriminatory housing practices involving advertising and in determining whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur:

1. Use of words, phrases, symbols, and forms in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations as set forth at 24 CFR 109.20 (1993), and 24 CFR 109.25 (1993) with no further amendments or additions, and which are on file with the Office of the Secretary of State and at the Offices of the Attorney General, Civil Rights Division;
2. Use of symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, or national origin;
3. Use of colloquialisms, including words or phrases used regionally or locally, which imply or suggest race, color, religion, sex, handicap, familial status, or national origin;
4. Use of maps or written instructions directing potential purchasers or renters to real estate for sale or rent which imply a discriminatory preference, limitation, or exclusion; and
5. Reference to area (location) description by use of names of facilities that cater to a particular racial, national origin, or religious group, including country club or private school designations, or by names of facilities which are used exclusively by one sex.

**D.** Nothing in this rule restricts advertisements of dwellings from stating or implying that the housing being advertised is available to persons of only one sex and not the other, where the sharing of living areas is involved, such as dwellings used exclusively for living quarters by educational institutions.

**E.** Nothing in this rule restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.

**F.** Nothing in this rule restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute "housing for older persons" as defined in A.R.S. § 41-1491.04.

**G.** Nothing in this Section shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-113. Selective Use of Advertising Media or Content**

The selective use of advertising media or content in particular combinations used exclusively for a housing development or site which leads to discriminatory results is a violation of the Act. In determining whether a media advertising campaign is violative of the Fair Housing Act, the Attorney General shall consider the following factors:

1. The use of English media alone or the exclusive use of media catering to the majority population in an area when, in the area, there are also available non-English or other minority media; and
2. The selective use of human models which primarily cater to one racial, sexual, or national origin segment of the population without a complementary advertising campaign that is directed at other groups.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-114. Fair Housing Policy and Practices**

In the investigation of complaints, the Attorney General shall consider the following as evidence of compliance with the prohibitions against discrimination in advertising under the Act.

1. Use of Equal Housing Opportunity logotype, statement, or slogan. All advertising of residential real estate for sale, rent, or financing shall contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home-seeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin.
2. Use of human models. Human models in photographs, drawings, or other graphic techniques shall not be used to indicate exclusiveness because of race, color, religion, sex, handicap, familial status, or national origin. If models are used in display advertising campaigns, the models shall be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children. Models, if used, shall portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one such group;
3. Coverage of local laws. Whether the advertisement includes a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental, or financing of dwellings; and
4. Notification of fair housing policy.
   a. Employees. Whether the publisher of the advertisement, the advertising agency, and the firm engaged in the sale, rental, or financing of real estate provided a printed copy of their nondiscrimination policy to each employee and officer.
   b. Clients. Whether the publishers of the advertisement and the advertising agency posted a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising and have copies available for all firms and persons using its advertising services.
   c. Publishers' notice. Whether the publisher published at the beginning of the real estate advertising section a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental, or financing of dwellings.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-115. Complaints**

**A.** A complaint that any person has engaged in or is engaging in an unlawful housing practice within the meaning of the Act may be filed by or on behalf of a person claiming to be aggrieved or by the Attorney General not later than one year after an alleged discriminatory housing practice has occurred or terminated.

**B.** A complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to be engaged, in a discriminatory housing practice.

**C.** A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising, insuring, or financing of dwellings or the provision of brokerage services relating to the sale or rental of dwellings, if that other person acting within the scope of his or her authority as an employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

**D.** Complainants may file complaints in person or by mail to: Attorney General, Civil Rights Section, 1275 West Washington, Phoenix, Arizona 85007, or Attorney General, Tucson Office, Civil Rights Section, 402 Congress West, Tucson, Arizona 85701, or such alternate or additional offices as the Attorney General may from time to time establish.

**E.** Complainants may provide information necessary to state a violation of the Act by telephone to the Civil Rights Section. The Civil Rights Section shall reduce the information provided by telephone to writing on the prescribed complaint form and shall send the form to the complainant to be signed and affirmed. Such a complaint shall be deemed to have been filed on the date that the information has been telephonically taken, provided that the complainant subsequently signs and affirms the complaint.

**F.** Each complaint shall be in writing and shall be signed and affirmed by the person filing the complaint. The signature and affirmation may be made at any time during the investigation. The affirmation shall state:

"I believe under penalty of perjury that the foregoing is true and correct."

**G.** Complaint forms shall be available in the Civil Rights Section of the Attorney General's Office. The Attorney General shall accept as timely pursuant to A.R.S. § 41-1491.22(C) any written statement which substantially sets forth in accordance with subsection (H) the allegations of a discriminatory housing practice under the Act, if the Complainant signs and affirms the complaint on the required form at any time during the investigation. The Attorney General shall provide assistance in filling out forms and in filing a complaint.

**H.** Each complaint shall contain the following information:
1. The name and address of an aggrieved person;
2. The name and address of a respondent;
3. A description and the address of the dwelling which is involved, if appropriate; and
4. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

**I.** Except as provided in subsection (E), a complaint is filed when it is received by the Civil Rights Section of the Attorney General's Office.

**J.** A complaint is timely filed if, within the one-year period for the filing of complaints, written information identifying the parties and describing generally the alleged discriminatory housing practice is filed as provided in subsection (E), (G), or (H).

**K.** Where a complaint alleges a discriminatory housing practice that is continuing, as manifested by a number of incidents of such conduct, the complaint shall be timely if filed within one year of the last alleged occurrence of that practice.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-116. Amendment of Complaints**

Complaints may be amended at any time. Amendments may be used:
1. To cure technical defects or omissions, including failure to sign or affirm a complaint;
2. To clarify or amplify the allegations in a complaint; or
3. To join additional or substitute respondents or aggrieved persons as complainants. Except for the purpose of notifying new respondents under R10-2-118, amended complaints shall be considered as having been made as of the original filing date.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-117. Notification to the Complainant**

Upon the filing of a complaint, the Attorney General shall serve a notice upon each complainant on whose behalf the complaint was filed. The notice shall:

1. Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing;
2. Include a copy of the complaint;
3. Advise the complainant of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under this Article;
4. Advise the complainant of his or her right to commence a civil action under A.R.S. § 41-1491.31 in an appropriate court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice or the breach of a conciliation agreement entered into pursuant to A.R.S. § 41-1491.26. The notice shall state that the computation of this two-year period excludes any time during which a subpoena enforcement procedure is pending under this Article; and
5. Advise the complainant that retaliation against the complainant or any other person because of the filing of a complaint or because the person testified, assisted, or participated in an investigation or conciliation under this Article is a discriminatory housing practice that is prohibited by A.R.S. § 41-1491.18.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-118. Notification of Respondent**

**A.** Within 20 days of the filing of a complaint under R10-2-115 or the filing of an amended complaint under R10-2-116, the Attorney General shall serve a notice on each respondent. A person who is not named as a respondent in a complaint but who is identified in the course of the investigation as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person.

**B.** The notice shall:

1. Identify the alleged discriminatory housing practice upon which the complaint is based and include a copy of the complaint;
2. State the date that the complaint was accepted for filing;
3. Advise the respondent of the time limits to file a response, of the procedural rights and obligations of the respondent, and that the response shall be signed and affirmed by the respondent. The affirmation must state: "I declare under penalty of perjury that the foregoing is true and correct";
4. Advise the respondent of the complainant's right to commence a civil action under the Act in Arizona Superior Court at any time within two years after the occurrence or termination of the alleged discriminatory housing practice or the breach of a conciliation agreement entered into pursuant to A.R.S. § 41-1491.26. The notice shall state that the computation of this two-year period excludes any time during which a subpoena enforcement procedure is pending under this Article with respect to a complaint based on the alleged discriminatory housing practice;
5. If the person is not named in the complaint but is being joined as an additional or substitute respondent, explain the basis for the Attorney General's determination that the joined person is properly joined as a respondent; and
6. Advise the respondent that retaliation against any person because the person made a complaint or testified, assisted, or participated in an investigation or conciliation involving the Act, is a discriminatory housing practice that is prohibited under A.R.S. § 41-1491.18.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-119. Answer to a Complaint**

The respondent may file an answer not later than ten days after receipt of the notice and copy of the complaint described in R10-2-118. The answer shall be signed and affirmed by the respondent. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct".

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-120. Investigations**

**A.** Upon the filing of a complaint under R10-2-115, the Attorney General shall initiate an investigation to:

1. Obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint;
2. Document policies or practices of the respondent involved in the alleged discriminatory housing practice arising out of the complaint or the investigation of the complaint;
3. Obtain information concerning and document policies or practices of housing discrimination which suggest that the respondent is currently engaging in other housing practices or policies which are in violation of the Act; and
4. Develop factual data necessary for the Attorney General to make a determination under R10-2-124 whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided for under this Act.

**B.** During the course of this investigation, the Attorney General may develop data by formal and informal means including propounding interrogatories, conducting formal and informal interviews of witnesses, conducting on-site inspections of the property and dwelling, and issuing subpoenas and subpoenas duces tecum.

1. Interrogatories: The Attorney General's office may cause to be issued interrogatories upon any person. Interrogatories issued pursuant to this rule shall require that the person to whom the interrogatories are addressed answer those interrogatories under oath or affirmation. Interrogatories issued pursuant to this rule shall be answered and returned to the Attorney General's Office within 14 days of the receipt of the interrogatories except that any person served with such interrogatories may request of the Attorney General an extension of time in which to answer the interrogatories. Such extension may be granted upon a showing of good cause.
2. Subpoenas: The Attorney General may issue a subpoena compelling the attendance and testimony of a witness or requiring the production for examination or copying of documents, provided such evidence relates to unlawful practices covered by the Act and is relevant to the complaint which is being investigated or arises out of the investigation of the complaint. Except upon good cause or upon agreement of the witness, such subpoena shall provide a minimum of five days' notice before the witness must appear or produce documents. Within five days after the service of a subpoena on any person requiring the production of any evidence in the person's possession or control, such person may petition the Attorney General to revoke, limit, or modify the subpoena. The Attorney

General shall revoke, limit, or modify such subpoena if in its opinion the evidence required:
   a. Does not relate to unlawful practices prohibited by the Act;
   b. Is not relevant to the complaint which is being investigated;
   c. Does not describe with sufficient particularity the evidence whose production is required; or
   d. Is unduly burdensome or oppressive.
3. Witness interviews: All witness interviews may be under oath or affirmation. Any member of the Attorney General's office, or any agent designated by that office, may administer oaths or affirmations, examine witnesses, and receive evidence. Any person appearing before the Attorney General shall have the right to be represented by counsel. The Attorney General may re-interview a witness. Testimony provided in connection with any investigation conducted pursuant to A.R.S. § 41-1491.24 may be recorded by audio or video recording equipment, stenographic means, or other devices. A person who submits data or evidence to the Attorney General may retain or, on payment of lawful prescribed costs, procure a copy or transcript, if available, of the data or evidence submitted by that witness. A person who testifies before the Attorney General may obtain a copy of his or her own testimony upon request and upon providing the Attorney General with a blank audio or video tape of appropriate length.
4. On-site inspections: Any representative of the Attorney General's office may enter upon a property or dwelling which is the subject of a complaint of discrimination under the Act at reasonable hours, for purposes of inspecting such property or dwelling in connection with such complaint.
5. Time periods: Any time periods established under subsection (B) shall be governed by Rule 6(a), Arizona Rules of Civil Procedure (1993).

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-121. Access to Investigative File**

Reserved

**R10-2-122. Dismissal of Complaints**

The Attorney General may dismiss a complaint alleging an unlawful discriminatory housing practice under the following circumstances:

1. A party or parties and the Attorney General have entered into a conciliation agreement relating to the complaint;
2. The Attorney General has determined that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur;
3. The complainant has failed to cooperate with requests by the Attorney General for information necessary to investigate the complaint of discrimination, after having received notice that this failure to cooperate will result in dismissal of the complaint;
4. The complainant is no longer located at the address stated in the complaint of discrimination and the Attorney General is unable to locate the complainant, despite reasonable attempts to do so;
5. The Attorney General has determined that is lacks jurisdiction to investigate the complaint; and
6. The Attorney General has approved a complainant's request to withdraw the complaint.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-123. Conciliation**

**A.** During the period beginning with the filing of the administrative complaint and ending with the issuance of a complaint in superior court or the dismissal of the administrative complaint by the Attorney General, the Attorney General shall attempt to conciliate the administrative complaint.

**B.** In conciliating an administrative complaint, the Attorney General shall attempt to achieve a just resolution and obtain assurances that the respondent will remedy any violations of the rights of the aggrieved person and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their recurrence.

**C.** Where the rights of the aggrieved person and the respondent can be protected, the Attorney General may suspend fact finding and engage in efforts to resolve the complaint by conciliation.

**D.** The terms of a settlement of an administrative complaint shall be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in subsection (F). The provisions that may be sought for the vindication of the public interest are described in subsection (H).

**E.** The Attorney General may issue a determination under R10-2-124 if the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the Attorney General or its agent.

**F.** The following types of relief may be sought (without limitation) for aggrieved persons in conciliation:
   1. Monetary relief in the form of damages, including compensatory damages for out-of-pocket losses, emotional distress, humiliation, embarrassment, inconvenience, and lost housing opportunity, and punitive damages and attorney fees and costs;
   2. Equitable relief, including access to the dwelling at issue or to a comparable dwelling, provision of services or facilities in connection with a dwelling, reasonable accommodation of handicap, or other specific relief; and
   3. Affirmative relief, including fair housing training, and posting of approved fair housing notices or rules, and injunctive relief appropriate to the elimination of discriminatory housing practices.

**G.** The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in subsection (F). The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.

**H.** The following types of provisions will vindicate the public interest:
   1. Elimination of discriminatory housing practices;
   2. Prevention of future discriminatory housing practices;
   3. Remedial affirmative activities designed to overcome discriminatory housing practices;
   4. Reporting requirements;
   5. Monitoring and enforcement activities; and
   6. Fair housing training.

**I.** If the complainant cannot be located, withdraws his complaint, or the Attorney General determines that there is not reasonable cause to believe that discrimination has occurred or is expected to occur with respect to the complainant, the Attorney General may enter into a conciliation agreement with one or more of the respondents to vindicate the public interest.

**J.** The Attorney General shall terminate its efforts to conciliate the administrative complaint if the respondent or aggrieved

person fails or refuses to confer with the Attorney General; the aggrieved person or the respondent fails to make a good faith effort to resolve any dispute; or the Attorney General finds, for any reason, that voluntary agreement is not likely to result.

**K.** Where the aggrieved person has commenced a civil action under an Act of Congress or a state law seeking relief from the alleged discriminatory housing practice, and the trial in the action has commenced, the Attorney General shall terminate conciliation efforts unless the court specifically directs the Attorney General to continue.

**L.** The Attorney General shall, from time to time, review compliance with the terms of any conciliation agreement.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**R10-2-124. Reasonable Cause Determinations**

If a conciliation agreement under R10-2-123 has not been executed and approved by the Attorney General, or the complaint has not otherwise been dismissed pursuant to R10-2-122(C) - (F), the Attorney General shall determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. Any determination shall be based solely on the facts concerning the alleged discriminatory housing practice provided by complainant and respondent or otherwise disclosed during the investigation. In making this determination, the Attorney General shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in Superior Court.

1. If the Attorney General determines that reasonable cause exists, the Attorney General shall attempt to conciliate the administrative complaint for a period not to exceed 30 days. If no conciliation is reached within that period, the Attorney General shall file a civil action against the respondent.
2. Nothing in these rules shall prevent the Attorney General from filing a civil action prior to the expiration of the 30-day conciliation period if it appears that conciliation is unlikely to occur within 30 days of the issuance of a finding of reasonable cause to believe that discrimination has occurred.
3. These requirements do not mandate the issuance of a reasonable cause determination prior to the filing of an action under A.R.S. § 41-1491.35.

**Historical Note**

Adopted effective December 2, 1994 (Supp. 94-4).

**TITLE 10. LAW**

**CHAPTER 3. DEPARTMENT OF LAW
CIVIL RIGHTS DIVISION**

(Authority: A.R.S. § 41-1401 et seq.)

*Articles 1 through 3, consisting of Sections R10-3-01 through R10-3-310, adopted effective September 2, 1977.*

*Former Article 1, consisting of Sections R10-3-01 through R10-3-18, repealed effective October 11, 1977.*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Sections R10-3-100 through R10-3-109, adopted effective September 2, 1977 (Supp. 77-5).*

*Former Article 1, consisting of Sections R10-3-01 through R10-3-18, repealed effective October 11, 1977.*

Section


**ARTICLE 2. EMPLOYMENT DISCRIMINATION**

*Article 2, consisting of Sections R10-3-200 through R10-3-209, adopted effective September 2, 1977 (Supp. 77-5).*

Section


**ARTICLE 3. VOTING RIGHTS AND PUBLIC ACCOMMODATION DISCRIMINATION**

*Article 3, consisting of Sections R10-3-300 through R10-3-310, adopted effective September 2, 1977 (Supp. 77-5).*

Section


**ARTICLE 4. THE ARIZONANS WITH DISABILITIES ACT**

*Article 4, consisting of Sections R10-3-401 through R10-3-412, adopted effective September 3, 1996 (Supp. 96-3).*

Section


**ARTICLE 1. GENERAL PROVISIONS**

**R10-3-100. Purpose**

These regulations set forth the procedures established by the Arizona Civil Rights Division for carrying out its responsibilities in the administration and enforcement of the Arizona Civil Rights Act of 1965, as amended. Based upon its experience in the administration of the Arizona Civil Rights Act, and upon its evaluation of suggestions for amendments submitted by interested persons, the Division may from time to time amend and revise these procedures.

**Historical Note**

Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-101. Definitions**

**A.** The term "Act" shall mean the Arizona Civil Rights Act of 1965, as amended.

**B.** The term "Division" shall mean the Arizona Civil Rights Division, Department of Law, or any of its designated agents.

**C.** The term "Board" shall mean the Arizona Civil Rights Advisory Board as defined in A.R.S. § 41-1401.

**D.** The terms "person", "employment agency", "labor organization", "employer", "Charging Party", "Respondent", and "places of public accommodation" shall have the same meanings as set forth in the Act.

**E.** The term "Commission" shall mean the United States Equal Employment Opportunity Commission.

**Historical Note**

Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-102. Where to file a charge**

A charge may be filed at the offices of the Division or with any designated agent of the Division.

**Historical Note**

Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-103. Confidentiality of charge**

Neither a charge, nor information obtained pursuant to the Act, nor information obtained from records required to be kept or reports required to be filed pursuant to the Act shall be made matters of

public information by the Division, prior to the institution of any proceedings in any federal or state court resulting from the charge. This provision does not apply to such earlier disclosures to the Charging Party, Respondent, witnesses and representatives of interested federal and local agencies as may be appropriate or necessary for the carrying out of the Division's functions under the Act, nor to the publication of data derived from such information in the form which does not reveal the identity of the Charging Party, Respondent, or persons supplying the information.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-104. Withdrawal of charge**

**A.** Prior to the execution of a conciliation agreement, a charge filed by a Charging Party may be withdrawn only with the consent of the Division.

**B.** The request for withdrawal shall be in writing and shall set forth the reasons for such request. The request must be signed by the Charging Party.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-105. Pre-determination settlement procedure**

**A.** At any time subsequent to a preliminary investigation and prior to the issuance of findings of fact, the Division or its designated agent may engage in pre-determination settlement discussions. The Executive Director or an assistant attorney general designated by the Director may make and approve settlements, on behalf of the Division.

**B.** In the alternative, the Division may facilitate a settlement between the Charging Party and the Respondent by permitting withdrawal of the charge pursuant to R10-3-104.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-106. Application for reconsideration; reopening of proceedings**

The Charging Party may apply for reconsideration of dismissal of the charge. The application shall be in writing, under oath, stating specifically the grounds upon which it is based, and shall be filed within 20 days from the date of the Charging Party's receipt of the Division's decision. Such application may be granted or denied at the discretion of the Division. The Division, may on its motion, reconsider a dismissal of a charge or any findings of fact it has issued.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-107. Posting of Act**

**A.** Every place of public accommodation, employer, employment agency and labor organization or person subject to the Act shall post and keep posted in conspicuous places upon its premises where notices to patrons, employees, applicants for employment and members are customarily posted a notice to be prepared and distributed by the Division, which shall set forth excerpts from, or summaries of, the Act and such relevant information which the Division deems necessary to explain the Act. Such notices may be obtained from the office of the Division.

**B.** Willful failure to post such notices after having been furnished such notices by the Division shall be punishable by a fine of not more than $100.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-108. Certification of documents or records**

The Executive Director of the Division, or any other employee of the Division as may be designated by the Director, is authorized and empowered to certify all documents or records which are a part of the files and records of the Division.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-109. Construction of rules, availability**

**A.** These rules and regulations shall be liberally construed to secure a just, speedy and inexpensive determination of the issues presented. The Division does not intend that a failure to comply with these rules should constitute a jurisdictional or other bar to administrative or legal action unless otherwise required by statute.

**B.** The rules and regulations of the Division shall be available to the public at the offices of the Division.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

## ARTICLE 2. EMPLOYMENT DISCRIMINATION

**R10-3-200. Charges filed by or on behalf of aggrieved persons or by a member of the Division; submission of information**

**A.** A charge that any person has engaged in or is engaging in an unlawful employment practice within the meaning of the Act may be filed by or on behalf of a person claiming to be aggrieved. A charge on behalf of a person claiming to be aggrieved may be filed by any person, agency, or organization. A charge shall be deemed to have been filed by or on behalf of a person claiming to be aggrieved if received from the Commission. The charge need not identify by name the person on whose behalf it is filed. The person filing the charge, however, must provide the Division with the name and address of the named person on whose behalf the charge is filed. During the Division's investigation, Division personnel shall verify the authorization of such charge by any named person on whose behalf such charge is filed. The Division shall keep such information confidential and, in transmitting information to the Commission in regards to such charge, shall not disclose such information to the Commission except on condition that the identity of the person on whose behalf the charge is filed be kept confidential, pursuant to the Commission's regulations governing confidentiality. If this condition is violated by the Commission, the Division may decline to honor subsequent requests for such information. A person filing a charge on behalf of an aggrieved person shall be considered a party to the Division's proceedings with respect to receiving notice at each stage in which notice is sent to parties.

**B.** The Division may receive information concerning alleged violations of the Act from any person. Where the information discloses that a person is entitled to file a charge with the Division, assistance will be rendered in the filing of the charge. A member of the Division in accordance with these rules, may file a charge.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-201. Charges by members of the Division**

Any member of the Division with the written approval of the Executive Director may file a charge.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-202. Forms**

The charge shall be in writing and signed, and shall be sworn to before a notary public, a member of the Division, a designated agent of the Division, or other persons duly authorized by law to administer oaths and take acknowledgments. Charge forms are available to all persons at the Division. Appropriate assistance in filling out forms may be rendered to Charging Parties by the Division.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-203. Contents: amendment**

**A.** Each charge shall contain the following:
1. The full name and address of the Charging Party.
2. The full name and address of the Respondent.
3. A clear and concise statement of the facts including pertinent dates constituting the alleged unlawful employment practice.
4. If known, the approximate number of employees of the Respondent employer.

**B.** Not withstanding the provisions of subsection (A) of this rule or R10-3-202, a charge is deemed filed when the Division receives from the Charging Party a written statement sufficiently precise to identify the parties and to describe generally the unlawful action or practice or if received from the Commission. A charge may be amended
1. To cure technical defects or omissions, including but not limited to, failure to swear to the charge, or
2. To clarify and amplify allegations.

The amendments alleging acts occurring before the filing of the charge which constitute unlawful employment practices directly related to or growing out of the subject matter of the original charge shall be deemed to relate back to the original filing date.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-204. Time of filing charge**

A charge of discrimination in employment shall be filed within 180 days from the date upon which the alleged discriminatory practice or act occurred. If the alleged discriminatory practice or act is of a continuing nature, the date of the occurrence of the alleged discriminatory practice or act shall be deemed to be any date subsequent to the commencement of the alleged discriminatory practice or act up to and including the date upon which the lawful practice has ceased.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-205. Service of charge, orders and other process**

**A.** Notice of charge: A charge alleging an act or practice of discrimination in employment shall be served upon the Respondent within ten days of the date that the charge is filed with the Division.

**B.** Service of process: Charges, orders and other process and papers of the Division may be served personally or by registered or certified mail, return receipt requested. The verified return of the individual serving the same, setting forth the manner of service, and the return Post Office receipt when the service is by registered or certified mail, shall be proof of service.

**C.** Service upon duly authorized representatives: If a party appears by duly authorized representative, all papers other than the charge, notice of hearing, and final decisions and orders may be served, as herein provided, upon such duly authorized representative with the same force and effect as those served upon the party.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-206. Investigations**

**A.** By whom made: After a charge is filed and found to be in proper order, the Division shall make an investigation of the charge.

**B.** Position statements: The Division may request a party or witness to the proceeding to file on such forms as the Division prescribes a statement or report in writing, under oath, as to all the facts and circumstances concerning a charge filed with the Division pursuant to A.R.S. § 41-1481.

**C.** Issuance of interrogatories: During the course of investigation, any member of the Division may cause to be issued interrogatories upon any party or witness to the proceedings.

**D.** Answers to be sworn to by answering party: Interrogatories issued pursuant to R10-3-206(C) shall require that the person addressed answer the interrogatories under oath.

**E.** Answers to interrogatories to be returned to the Division within 14 days of receipt: Interrogatories issued pursuant to R10-3-206(C) shall be answered and returned to the Division within 14 days of receipt of the interrogatories.

**F.** Extension of time for answering interrogatories: Any person served with interrogatories issued pursuant to R10-3-206(C) may request of the Division a reasonable extension of time in which to answer the interrogatories. In no event, shall such extension of time exceed 21 days from the original date upon which said interrogatories were due. In computing any time period under R10-3-206(A) through (E), such computation shall be governed by Rule 6A, Arizona Rules of Civil Procedure, A.R.S. Volume 16.

**G.** Taking of evidence -- investigation:
1. In connection with the investigation of a charge filed under the Act, the Division or its duly authorized employees shall at all reasonable times have access to, for the purpose of examination, and have the right to copy any evidence of any person being investigated, provided such evidence relates to unlawful practices covered by the Act and is relevant to the charge under investigation.
2. For the purpose of investigations conducted by the Division:
   a. The Division may issue a subpoena compelling the attendance and testimony of witnesses or requiring the production for examination or copying of documents provided such evidence relates to unlawful practices covered by the Act and is relevant to the charge which is the subject matter of the hearing or investigation. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Division to revoke, limit or modify the subpoena. The Division shall revoke, limit or modify such subpoena if in its opinion the evidence required does not relate to unlawful practices covered by the Act, is not relevant to the charge which is the subject matter of the hearing or investigation does not describe with sufficient particularity the evidence whose production is required, or is unduly burdensome or oppressive. Any member of the Division, or any agent designated by the Division may administer oaths or affirmations, examine witnesses and receive such evidence.
   b. Any person appearing before the Division shall have the right to be represented by counsel.
   c. The Superior Court, upon application by the Division or by the person subpoenaed, shall have jurisdiction to issue an order

i. Requiring such person to appear before the Division, or its duly authorized agent, there to produce evidence relating to the matter under investigation if so ordered; or

ii. Revoking, limiting or modifying the subpoena or conditioning issuance of the subpoena upon payment of costs or expenses incurred to comply with the subpoena if in the court's opinion the evidence required does not relate to unlawful practices covered by the Act is not relevant to the charge which is the subject matter of the hearing or investigation, does not describe with sufficient particularity the evidence whose production is required or is unduly burdensome or oppressive.

Any failure to obey such order of the court may be punished by such court as a contempt.

**H.** Taking of testimony -- mechanical recording: A taking of testimony pursuant to R10-3-206(G) may be recorded by other than stenographic means, including but not limited to tape recording.

**I.** Right to inspect or copy data: A person who submits data or evidence to the Division may retain or, on payment of lawfully prescribed costs, procure a copy or transcript if available, except that a witness may for good cause be limited to inspection of the official transcript of his testimony.

**J.** Authority to issue subpoenas: A subpoena issued pursuant to A.R.S. § 41-1403 shall be issued by the Executive Director or an Assistant Attorney General designated by the Division.

**K.** Modification or revocation of subpoena: When the party subpoenaed petitions the Division pursuant to A.R.S. § 41-1403(B)(1) for revocation or modification of the subpoena, the decision to grant and or deny the petition shall be made by the Executive Director or an Assistant Attorney General assigned to the Division.

**L.** Subpoenas requested by Charging Parties or Respondents: No member of the Division will issue a subpoena on behalf of a person filing a charge, a person on whose behalf a charge was filed, or a Respondent.

**M.** Dismissal of a charge: Upon completion of an investigation, if the Division determines that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the Charging Party and the Respondent, in writing, of such action. Notification to the Charging Party shall include

1. A notice of right to request reconsideration of dismissal,
2. A copy of the Division's finding of no reasonable cause, and
3. Advice concerning his or her rights to proceed in court under the Act.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-207. Reasonable cause, conference, conciliation and persuasion**

**A.** If the Division determines that a charge fails to state a valid claim for relief under the Act or that there is not reasonable cause to believe that a charge is true, the Division shall dismiss the charge. Where, however, it determines that there is reasonable cause to believe that an unlawful employment practice has occurred or is occurring, it shall endeavor to eliminate such practice by informal methods of conference, conciliation, and persuasion.

**B.** The Division shall promptly notify the Charging Party and the Respondent, or in the case of a charge filed by the Division, the Respondent of its determination under subsection (A) of R10-3-207.

**C.** Conciliation agreement: In conciliating a charge in which a determination of reasonable cause has been made, the Division shall attempt to achieve a just resolution and to obtain assurances that the Respondent will eliminate the unlawful employment practices and take appropriate affirmative action. Conciliation agreements shall be in writing, and copies shall be sent to the parties. Proof of compliance with the conciliation agreement shall be obtained by the Division before the charge is closed.

**D.** Refusal of Respondent to cooperate: Should a Respondent fail or refuse to confer with the Division or its representatives, or fail to refuse to make a good faith effort to resolve the dispute, the Division may terminate its efforts to conciliate the dispute. In such event, the Respondent shall be notified promptly, in writing, that such efforts have been unsuccessful and will not be resumed except upon the Respondent's written request within the time specified in such notice.

**E.** Confidentiality of conciliation discussions: Nothing that is said or done during and as a part of the endeavors of the Division to eliminate unlawful employment practices by informal methods of conference, conciliation and persuasion may be made a matter of public information by the Division, or used as evidence in a subsequent proceeding without the written consent of the parties concerned.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-208. Notice to Charging Party of failure of conciliation**

When the Division is unable to obtain a conciliation agreement after it has made a determination of reasonable cause, it shall so notify the Charging Party, and any federal, or local agencies to which the charge has been previously referred. Notification to the Charging Party shall include

1. A notice of failure of conciliation, and
2. Advice concerning his or her rights to proceed in court under the Act.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-209. Recordkeeping, preservation of records, and reports to the Division**

Every employer, employment agency, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining including on the job training programs subject to this Act shall make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, preserve such records for such periods, and make such reports therefrom, as the Division deems reasonable, necessary or appropriate for the enforcement of this Act; provided, however, that no employer, employment agency, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining including on the job training programs required to file an EEO-1, -2, -3, or -4 Report with the Equal Employment Opportunity Commission shall be required to file a similar report with the Division unless specifically requested to do so by the Division.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

## ARTICLE 3. VOTING RIGHTS AND PUBLIC ACCOMMODATION DISCRIMINATION

### R10-3-300. Filing of charge

A charge of discrimination under the voting or public accommodation sections of the Act shall be filed with the Division only by a person, referred to as the Charging Party, claiming to be aggrieved by the alleged discriminatory practice or act.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

### R10-3-301. Form of charge

The charge shall be in writing and signed and shall be sworn to before a notary public, a member of the Division, a designated agent of the Division, or other persons duly authorized by law to administer oaths or take acknowledgments. Charge forms will be supplied by the Division upon request. Appropriate assistance in filling out forms may be rendered to Charging Parties by the Division.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

### R10-3-302. Contents of charge

Each charge shall contain the following:

1. The full name and address of the Charging Party.
2. The full name and address of the Respondent.
3. A plain and concise statement of the facts constituting the alleged unlawful discriminatory practice or act.
4. The date or dates of the alleged unlawful discriminatory practice or act.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

### R10-3-303. Amendment of charge

Notwithstanding the provisions of R10-3-302, a charge is deemed filed when the Division receives from the Charging Party, a written statement sufficiently precise to identify the parties and to describe generally the unlawful action or practice. A charge may be amended:

1. To cure technical defects or omissions, including but not limited to failure to swear to the charge, or
2. To clarify and amplify allegations.

The amendments alleging acts occurring before the filing of the charge which constitute unlawful practices directly related to or growing out of the subject matter of the original charge shall be deemed to relate back to the original filing date.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

### R10-3-304. Time of filing charge

A charge of discrimination under the voting and public accommodation sections of the Act shall be filed within 60 days from the date upon which alleged discriminatory practice or act occurred.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

### R10-3-305. Service of charge, orders and other process

**A.** A charge alleging an act or practice of discrimination in voting or public accommodation shall be served upon the Respondent within ten days of the date that the charge is filed with the Division.

**B.** Service of process: Charges, orders and other process and papers of the Division may be served personally or by registered or certified mail, return receipt requested. The verified return of the individual serving the same, setting forth the manner of service, and the return Post Office receipt when the service is by registered or certified mail shall be proof of service.

**C.** Service upon duly authorized representatives: If a party appears by duly authorized representative, all papers other than the charge, notice of hearing, and final decisions and orders may be served, as herein provided, upon such duly authorized representative with the same force and effect as those served upon the party.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

### R10-3-306. Investigations and hearings

**A.** By whom made: After a charge is filed and found to be in proper order, the Division shall make an investigation of the charge.

**B.** Position statements: The Division may request a party or witness to the proceeding to file on such forms as the Division prescribes a statement or report in writing, under oath, as to all the facts and circumstances concerning a charge filed with the Division pursuant to A.R.S. § 41-1471.

**C.** Issuance of interrogatories: During the course of investigation, the Division may cause to be issued interrogatories upon any party or witness to the proceeding.

**D.** Answers to be sworn to by answering party: Interrogatories issued pursuant to R10-3-306(C) shall require that the person addressed answer the interrogatories under oath.

**E.** Answers to interrogatories to be returned to the Division within 14 days of receipt: Interrogatories issued pursuant to R10-3-306(C) shall be answered and returned to the Division within 14 days of receipt of the interrogatories.

**F.** Extension of time for answering interrogatories: Any person served with interrogatories issued pursuant to R10-3-306(C) may request of the Division a reasonable extension of time in which to answer the interrogatories. In no event shall such extension of time exceed 21 days from the original date upon which said interrogatories were due. In computing any time period under R10-3-306(A) through (E), such computation shall be governed by Rule 6(A), Arizona Rules of Civil Procedure, A.R.S. Volume 16.

**G.** Taking of evidence -- investigation and hearing:

1. In connection with the investigation of a charge filed under the Act, the Division or its duly authorized employees shall at all reasonable times have access to, for the purpose of examination, and have the right to copy any evidence of any person being investigated, provided such evidence relates to unlawful practices covered by the Act and is relevant to the charge under investigation.
2. For the purpose of all hearings and investigations conducted by the Board or Division:
   a. The Division, on its own initiative, or upon application of any party to the proceeding, may issue a subpoena compelling the attendance and testimony of witnesses or requiring the production for examination or copying of documents provided such evidence relates to unlawful practices covered by the Act and is relevant to the charge which is the subject matter of the hearing or investigation. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Division to revoke, limit or modify the subpoena. The Division shall revoke, limit or modify such subpoena if in its opinion the evidence required does not relate to unlawful practices covered by the Act, is not relevant to the charge which is the subject matter of the hearing or investigation

does not describe with sufficient particularity the evidence whose production is required, or is unduly burdensome or oppressive. Any member of the Division, or any agent designated by the Division may administer oaths or affirmations, examine witnesses and receive such evidence.

b. Any person appearing before the Division or Board shall have the right to be represented by counsel.

c. The Superior Court, upon application by the Division or by the person subpoenaed, shall have jurisdiction to issue an order

i. Requiring such person to appear before the Division, the Board or the duly authorized agent of either, there to produce evidence relating to the matter under investigation if so ordered, or

ii. Revoking, limiting or modifying the subpoena or conditioning issuance of the subpoena upon payment of costs or expenses incurred to comply with the subpoena if in the court's opinion the evidence required does not relate to unlawful practices covered by the Act is not relevant to the charge which is the subject matter of the hearing or investigation, does not describe with sufficient particularity the evidence whose production is required or is unduly burdensome or oppressive.

Any failure to obey such order of the court may be punished by such court as a contempt.

d. Where a subpoena is issued upon the motion of a party to the proceeding other than the Division, the cost of service, witness and mileage fees shall be borne by the party at whose request the subpoena is issued, unless otherwise ordered by the Division. Such witness and mileage fees shall be the same as are paid witnesses in the Superior Court of the state.

**H.** Taking of testimony -- mechanical recording: A taking of testimony pursuant to R10-3-306(G) may be recorded by other than stenographic means, including but not limited to tape recording.

**I.** Right to inspect or copy data: A person who submits data or evidence to the Division may retain or, on payment of lawfully prescribed costs, procure a copy or transcript if available, except that a witness may for good cause be limited to inspection of the official transcript of his testimony.

**J.** Authority to issue subpoenas: A subpoena issued pursuant to A.R.S. § 41-1403 shall be issued only by the Executive Director or an Assistant Attorney General designated by the Division.

**K.** Modification and or revocation of subpoena: When the party subpoenaed petitions the Division pursuant to A.R.S. § 41-1403(B)(1), for revocation and or modification of the subpoena, the decision to grant and or deny the petition shall be made by the Division Executive Director or an Assistant Attorney General assigned to the Division.

**L.** Dismissal of a charge: Upon completion of an investigation, if the Division determines that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the Charging Party and the Respondent, in writing, of such action. Notification to the Charging Party shall include

1. A notice of right to request reconsideration of dismissal,
2. A copy of the Division's finding of no reasonable cause, and
3. Advice concerning his or her rights to proceed in court under the Act.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-307. Issuance of notice of hearing**

If, upon investigation, the Division determines that there is reasonable cause to believe that the charge is true, it shall endeavor to eliminate such alleged discriminatory practice through means of conference, conciliation or persuasion.

If the Division is unable to eliminate the discriminatory practice or act through conference, conciliation or persuasion, it shall issue and cause to be served upon the Respondent a copy of the charge filed with the Division, as the same may have been amended or supplemented, together with a notice of hearing before the Board or a subcommittee thereof. The notice shall specify the date, time and place of the hearing and in no event shall the date specified be less than 10 or more than 20 days from the date of issuance thereof. The charge and notice shall be served on the Respondent at least ten days before the date of the hearing. The notice shall advise the Respondent that he may file a written, verified answer to the charge.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-308. Hearings**

All hearings before the Board involving discrimination in Voting and Public Accommodation shall be conducted pursuant to A.R.S. § 41-1009 et seq., except as may be modified by A.R.S. § 41-1471.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-309. Orders**

**A.** The Board shall, within 30 days from the date the hearing is concluded, enter an order setting forth its finding of fact and serve a copy of such finding on all parties.

**B.** If the Respondent fails to correct a discriminatory practice or act found by the Board to exist, within 60 days of such finding, the Charging Party or the Division may file, within 30 days thereafter, a complaint in the Superior Court of the county where the discriminatory practice or act is alleged to have occurred.

**C.** If, upon all the evidence, the Division shall find that a Respondent has not engaged in an unlawful discriminatory practice or act, the Division shall state its finding of fact and shall enter and serve an order dismissing the charge and advising the Charging Party that he may within 30 days thereafter file a complaint in the Superior Court of the county where the alleged discriminatory practice or act occurred, as prescribed by the provisions of A.R.S. § 41-1471.

**D.** If the Board fails to enter an order setting forth its finding within 30 days from the date of the hearing, the Charging Party may, within 30 days thereafter, file a complaint in the Superior Court of the county where the alleged discriminatory practice or act is alleged to have occurred.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

**R10-3-310. Record of hearings**

The record of the hearings before the Division shall consist of the charge and any amendments or supplements thereto, written applications, motions, orders, transcript of the record on the hearing, exhibits, depositions, the final order, and any additional documents as the Division may direct.

**Historical Note**
Adopted effective September 2, 1977 (Supp. 77-5).

## ARTICLE 4. THE ARIZONANS WITH DISABILITIES ACT

### R10-3-401. Definitions

The following terms used in this Article or in the materials incorporated by reference in this Article have the following meaning:

1. "Act" or "the Act" means the "Arizonans with Disabilities Act" or "AzDA," A.R.S. § 41-1492 et seq.
2. "ADAAG" means Appendix A to 28 CFR 36, referred to as the "Americans with Disabilities Act Accessibility Guidelines."
3. "Assistant Attorney General" means the "Arizona Assistant Attorney General."
4. "Attorney General" means the "Arizona Attorney General."
5. "National" means "State of Arizona."
6. "Respondent" means a person, public entity, commercial facility, or public accommodation against whom a complaint has been filed alleging a violation of the Arizonans with Disabilities Act.

**Historical Note**

Adopted effective September 3, 1996 (Supp. 96-3).

### R10-3-402. Nondiscrimination on the Basis of Disability by Specified Public Transportation

Owners and operators of specified public transportation shall comply with the provisions of 36 CFR 1191 and accompanying appendix, adopted September 6, 1991 and no further amendments, relating to specified public transportation services by a private entity, which are adopted, incorporated by reference and are on file with the Office of the Arizona Attorney General Civil Rights Division, the Office of the Arizona Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035.

**Historical Note**

Adopted effective September 3, 1996 (Supp. 96-3).

### R10-3-403. Nondiscrimination on the Basis of Disability by Public Entities

**A.** Public entities shall comply with the provisions of 28 CFR 35.130(b)(4), 35.133, 35.135, 35.150, 35.151, 35.163, and Appendix A to 28 CFR 36, adopted July 26, 1991, and no further amendments, which are adopted, incorporated by reference and are on file with the Office of the Attorney General Civil Rights Division, the Office of the Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035.

**B.** 28 CFR 35.150(c), as incorporated by this Section, is amended as follows:

1. A public entity shall comply with the obligations of this Section relating to provision of curb ramps or other sloped areas where existing public pedestrian walkways cross curbs at locations serving state and local government offices and facilities, transportation, places of public accommodation, employers, and the residences of individuals with disabilities no later than January 26, 1997, but in any event as expeditiously as possible.
2. A public entity shall comply with the obligations of this Section relating to provision of curb ramps or other sloped areas where existing public pedestrian walkways cross curbs at areas not subject to subsection (B)(1) no later than January 26, 1997, but in any event as expeditiously as possible.
3. If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a specific schedule for the installation of curb ramps or other sloped areas where pedestrian walkways cross curbs that complies with the requirements of subsections (B)(1) and(2).

**Historical Note**

Adopted effective September 3, 1996 (Supp. 96-3).

### R10-3-404. Nondiscrimination on the Basis of Disability by Places of Public Accommodation and in Commercial Facilities

Places of public accommodations and commercial facilities shall comply with the provisions of 28 CFR 36 and accompanying Appendix A (referred to as the "Americans with Disabilities Act Accessibility Guidelines" or "ADAAG"), adopted July 26, 1991, and no further amendments, with the exception of 28 CFR §§ 36.207, 36.209, 36.210 through 36.214, 36.306 through 36.307, 36.501 through 36.506, 36.508, and 36.601 through 36.608, which are adopted, incorporated by reference and are on file with the Office of the Attorney General Civil Rights Division, the Office of the Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035.

**Historical Note**

Adopted effective September 3, 1996 (Supp. 96-3).

### R10-3-405. Complaints

**A.** Any person may file a complaint alleging discrimination on the basis of disability in accordance with the provisions of this Article. The complaint may be filed with the Attorney General no later than 180 days after an alleged discriminatory act or practice in violation of the Act or this Article. The complaint may be filed with the assistance of any person or organization authorized to act on behalf of the complaining person.

**B.** A complaint may be filed against any person alleged to be engaged, to have engaged, or about to be engaged, in a discriminatory act or practice in violation of the Act or this Article.

**C.** A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to the accessibility of any public building, public accommodation, commercial facility, or public transportation service, if that person, acting within the scope of their authority as an employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a violation of the Act or this Article.

**D.** A person may file a complaint in person with, or by mail to: Attorney General, Civil Rights Division, 1275 West Washington, Phoenix, Arizona 85007; or Attorney General, Tucson Office, Civil Rights Division, 402 Congress West, Tucson, Arizona 85701; or such alternate or additional offices as the Attorney General may establish.

**E.** A person may provide information stating a violation of the Arizonans with Disabilities Act by telephone to the Attorney General. The Attorney General shall reduce the information provided by telephone to writing on a complaint form and send the form to the complaining person to be signed and affirmed.

**F.** Each complaint must be in writing and shall be signed and affirmed by the complaining person filing the complaint. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct".

**G.** The Attorney General shall accept any written statement which substantially sets forth the allegations of a discriminatory act or practice under the Arizonans with Disabilities Act. Personnel in the Civil Rights Division shall provide appropriate assistance in filling out complaint forms and in filing a complaint.

**H.** Each complaint shall contain substantially the following information:

1. The name and address of the complaining person;
2. The name and address of the respondent, if available;

3. A description and the address of the public entity, commercial facility, public accommodation or specified public transportation which is involved, if available;
4. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory act or practice.

**I.** A complaint is filed when it is received by the Attorney General's Office.

**J.** A complaint is timely filed if within the 180-day period for the filing of complaints, written information identifying the parties and describing generally the alleged discriminatory act or practice is filed as provided in R10-3-405(D) and (E).

**K.** Where a complaint alleges a discriminatory act or practice that is continuing, the complaint will be timely if filed within 180 days of the last alleged occurrence of that practice.

**L.** Failure to file an administrative complaint pursuant to this Section does not prevent an aggrieved person from bringing a civil action in Superior Court pursuant to A.R.S. § 41-1492.08.

**Historical Note**
Adopted effective September 3, 1996 (Supp. 96-3).

**R10-3-406. Amendment of Complaints**

**A.** Complaints may be amended at any time during the pendency of the investigation. Amendments may be used:
1. To cure technical defects or omissions, including failure to sign or affirm a complaint;
2. To clarify or add to the allegations in a complaint; or
3. To join additional or substitute respondents.

**B.** Except for the purposes of notifying respondents under R10-3-408, amended complaints shall relate back to the original filing date.

**Historical Note**
Adopted effective September 3, 1996 (Supp. 96-3).

**R10-3-407. Notification of the Complaining Person**

Upon the filing of a complaint, the Attorney General shall serve a notice upon each complaining person on whose behalf the complaint was filed. The notice shall:
1. Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing;
2. Include a copy of the complaint;
3. Advise the complaining person of the time limits applicable to complaint processing and of the procedural rights and obligations of the complaining person under this Article;
4. Advise the complaining person of their right to commence a civil action under A.R.S. § 41-1492.08 in an appropriate court, not later than 2 years after the occurrence or termination of the alleged discriminatory act or practice or the breach of a conciliation agreement entered into under this Article; and
5. Advise the complaining person that retaliation against the complaining person or any other person because of the filing of a complaint or because the person testified, assisted, or participated in an investigation or conciliation under this Article, is a discriminatory act or practice that is prohibited by A.R.S. § 41-1492.10.

**Historical Note**
Adopted effective September 3, 1996 (Supp. 96-3).

**R10-3-408. Notification of Respondent**

**A.** Within 20 days of the filing of a complaint or the filing of an amended complaint, the Attorney General shall serve a notice on each respondent. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation as a person who is alleged to be engaged, to have engaged, or about to engage in the discriminatory act or practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person.

**B.** The notice shall:
1. Identify the alleged discriminatory act or practice upon which the complaint is based, and include a copy of the complaint;
2. State the date that the complaint was accepted for filing;
3. Advise the respondent of the time limits to file a response and of the procedural rights and obligations of the respondent;
4. Advise the respondent of the complaining person's right to commence a civil action under the Act in an Arizona Superior Court at any time within 2 years after the occurrence or termination of the alleged discriminatory act or practice.
5. If the person is not named in the complaint, but is being joined as an additional or substitute respondent, explain the basis for the Attorney General's belief that the joined person is properly joined as a respondent.
6. Advise the respondent that retaliation against any person because the person made a complaint or testified, assisted, or participated in an investigation or conciliation under this Section, is a discriminatory act or practice that is prohibited under A.R.S. § 41-1492.10.

**Historical Note**
Adopted effective September 3, 1996 (Supp. 96-3).

**R10-3-409. Answer to a Complaint**

**A.** The respondent may file an answer not later than 10 days after receipt of the notice described in R10-3-408. The answer shall be signed and affirmed by the respondent. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct."

**B.** An answer may be amended at any time during the pendency of the investigation.

**Historical Note**
Adopted effective September 3, 1996 (Supp. 96-3).

**R10-3-410. Investigations**

**A.** Upon the filing of a complaint, the Attorney General shall initiate an investigation to:
1. Obtain information concerning the events or transactions that relate to the alleged discriminatory act or practice identified in the complaint.
2. Document policies or practices of the respondent involved in the alleged discriminatory act or practice raised in the complaint.
3. Develop factual data necessary for the Attorney General to make a determination whether reasonable cause exists to believe that a discriminatory act or practice has occurred or is about to occur, and to take other actions provided by A.R.S. § 41-1492.09.

**B.** Issuance of interrogatories. During the course of investigation, any member of the Attorney General's Office may cause to be issued interrogatories upon any party or witness to the proceedings.
1. Interrogatories issued pursuant to this provision shall require that the person addressed answer the interrogatories under oath.
2. Interrogatories issued pursuant to this provision shall be answered and returned to the Attorney General's Office within 14 days of receipt of the interrogatories.
3. Any person served with interrogatories issued pursuant to this provision may request of the Attorney General's

Office a reasonable extension of time in which to answer the interrogatories. In computing any time period under this provision, the computation shall be governed by Rule 6A, Arizona Rules of Civil Procedure, A.R.S. Volume 16.

**C.** Taking of Testimony -- Mechanical Recording. A taking of testimony pursuant to R10-3-405(F)(4) may be recorded by other than stenographic means, including, but not limited to, tape recording.

**Historical Note**
Adopted effective September 3, 1996 (Supp. 96-3).

**R10-3-411. Reserved**

**R10-3-412. Conciliation**

**A.** In conciliating a complaint, the Attorney General shall attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violation of the rights of the aggrieved person, and take action that will assure the elimination of discriminatory acts or practices, or their prevention or recurrence.

**B.** Where the rights of the complaining party and the respondent can be protected, the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation.

**C.** The terms of a conciliation agreement shall be in writing. The conciliation agreement shall seek to protect the interest of the complaining person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in A.R.S. § 41-1492.09(B). The provisions that may be sought for the vindication of the public interest are described in A.R.S. § 41-1492.09(C).

**D.** A conciliation agreement shall be executed by the respondent, the complaining person, and the Attorney General. The Attorney General shall approve a conciliation agreement and shall execute the agreement, only if:
1. The complaining person and the respondent agree to the relief accorded the aggrieved person; and
2. The provisions of the agreement will adequately vindicate the public interest.

**E.** The Attorney General may file a civil action under A.R.S. § 41-1492.09 if the complaining person and the respondent have executed a conciliation agreement that has not been approved by the Attorney General.

**F.** The following types of relief may be sought (without limitation) for complaining persons in conciliation:
1. Monetary relief in the form of damages, including compensatory damages and attorney fees; and
2. Equitable relief including but not limited to the provision of an auxiliary aid or service, modification of a policy, practice or procedure, and an order to alter facilities to make these facilities readily accessible to and usable by individuals with disabilities to the extent that alteration is required by A.R.S. § 41-1492.02.

**G.** The provisions which may be sought for vindication of the public interest (without limitation) include:
1. Elimination of discriminatory acts or practices, procedures, policies, and rules;
2. Prevention of future discriminatory acts or practices;
3. Remedial affirmative action activities to overcome discriminatory acts or practices;
4. Reporting requirements;
5. Monitoring and enforcement activities; and
6. Civil penalties against the covered person or entity in an amount of not more than $5,000.00 for a 1st violation and $10,000.00 for any subsequent violation.

**H.** The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in R10-3-412(G) and (H). The complaining person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.

**I.** The Attorney General shall terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with the Attorney General, or if the Attorney General finds, for any reason, that voluntary agreement is not likely to result.

**J.** Where the complaining person has commenced a civil action seeking relief from the alleged discriminatory act or practice, and the trial in the action has commenced, the Attorney General will terminate conciliation unless the court specifically directs the Attorney General to continue conciliation.

**K.** Except as otherwise provided by the Act or this Section, nothing that is done in the course of conciliation under this Section shall be made public without the written consent of the persons concerned.

**L.** The Attorney General has authority to review compliance with the terms of any conciliation agreement and shall file a civil action pursuant to A.R.S. § 41-1492.09, if there is reasonable cause to believe that a respondent has breached a conciliation agreement.

**Historical Note**
Adopted effective September 3, 1996 (Supp. 96-3).

**TITLE 10. LAW**

**CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION**

(Authority: A.R.S. §§ 41-1308 and 41-1309)

**ARTICLE 1. CRIME VICTIM COMPENSATION PROGRAM**

(Authority: A.R.S. §§ 41-2407 and 41-2402)

*Article 1, consisting of Sections R10-4-101 through R10-4-111, adopted effective December 31, 1986.*

Section


**ARTICLE 2. CRIME VICTIM ASSISTANCE PROGRAM**

(Authority: A.R.S. §§ 41-2408 and 41-2402)

*Article 2, consisting of Sections R10-4-201 through R10-4-207, adopted effective December 22, 1986.*

Section


**ARTICLE 3. REPEALED**

*Article 3, consisting of R10-4-301 through R10-4-305, adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1).*

*Article 3, consisting of R10-4-301 through R10-4-305, repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4).*

*Article 3, consisting of Sections R10-4-301 through R10-4-305, adopted effective September 11, 1986.*

**ARTICLE 4. DRUG AND GANG ENFORCEMENT ACCOUNT ADMINISTRATIVE PROGRAM**

*Article 4 consisting of Sections R10-4-401 through R10-4-404 adopted as permanent rules effective July 18, 1988.*

*Article 4 consisting of Sections R10-4-401 through R10-4-404 adopted as an emergency effective February 22, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.*

Section


**ARTICLE 1. CRIME VICTIM COMPENSATION PROGRAM**

**R10-4-101. Short title**

The provisions of these rules shall be known and cited as the "Arizona Crime Victim Compensation Program".

**Historical Note**

Adopted effective December 31, 1986 (Supp. 86-6).

**R10-4-102. Purpose**

The Commission, in recognition that many innocent persons suffer physical injury, extreme mental distress, or death as a direct result of criminal acts or in their efforts to prevent criminal acts or apprehend persons committing or attempting to commit criminal acts, and that victims and derivative victims may thereby suffer disabilities, incur financial hardships, or become dependent on public assistance, shall allocate the public resources available to satisfy these purposes in the most efficient and cost-effective manner possible through the state operation and supervision of locally administered operational units.

**Historical Note**

Adopted effective December 31, 1986 (Supp. 86-6).
Amended effective October 28, 1994 (Supp. 94-4).

**R10-4-103. Definitions**

In these rules:

1. "Allowable expense" means a cost for which a compensation award is authorized under these rules and made by the Crime Victim Compensation Board to a victim, a derivative victim, or both for economic loss.
2. "Board" means the Crime Victim Compensation Board for an operational unit.
3. "Claimant" means any natural person who is legally present in the United States filing a claim under these rules and authorized to receive a compensation award for economic loss because the person is:
   a. A victim of criminally injurious conduct that occurs while the person is legally present in the United States;
   b. A resident of this state who is injured by an act of international terrorism as defined in 18 U.S.C. 2331, 1992 (and no later editions or amendments) which is incorporated by reference and on file with the Commission and the Office of the Secretary of State;
   c. A derivative victim;
   d. A person authorized to act on behalf of victim, or a person authorized to act on behalf of a dependent of a deceased victim if the victim died as a direct result of criminally injurious conduct or an act of intentional terrorism as defined in 18 U.S.C. 2331; or
   e. A person who assumes the obligation or pays the expense directly related to economic loss incurred as a direct result of criminally injurious conduct or an act of international terrorism as defined in 18 U.S.C. 2331.
   f. Claimant does not include:
      i. An offender, an accomplice of the offender, or 1 who encouraged or in any way participated in or facilitated criminally injurious conduct, or an act of international terrorism as defined in 18 U.S.C. 2331;

ii. A person serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough, or any person who has escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conduct; or

iii. A person convicted of a federal crime who is delinquent in paying a fine, monetary penalty, or restitution imposed for the offense if the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts have issued a written determination that the entities administering federal victim programs have access to an accurate and efficient criminal debt payment tracking system.

4. "Collateral source" means a source of compensation for economic loss that a claimant has received, or that is available to a claimant, including:
   a. The offender or a 3rd party responsible for the offender's actions;
   b. The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of 2 or more states, unless the law providing for the compensation makes it excess or secondary to benefits under this rule; specifically excluding those federal funds granted under 42 U.S.C. 10602;
   c. Social Security, Medicare, and Arizona Health Care Cost Containment System;
   d. State-required, temporary, nonoccupational disability insurance;
   e. Worker's compensation;
   f. Wage continuation programs of any employer;
   g. Proceeds of a contract of insurance payable to the claimant for loss that the claimant sustained because of the criminally injurious conduct or act of international terrorism; or
   h. A contract providing for prepaid hospital and other health care services or benefits for disability.
5. "Commission" means the Arizona Criminal Justice Commission, as established by A.R.S. § 41-2404.
6. "Criminally injurious conduct" means conduct, whether completed or preparatory, that poses a substantial threat of physical injury, extreme mental distress, or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under applicable laws.
7. "Derivative victim" means
   a. The parent, spouse, child, or sibling of a victim who died as a result of criminally injurious conduct and includes a child born after the victim's death.
   b. A person living in the household of a victim who died as a result of criminally injurious conduct, in a relationship determined by the Board to be substantially similar to a relationship in subsection (7)(a).
   c. A member of the family of the victim who witnessed the criminally injurious conduct.
   d. A nonfamily member who witnessed a heinous crime.
   e. A person whose mental health counseling and care or presence during the mental health counseling and care of the victim is required for the successful treatment of the victim.
8. "Economic loss" means financial detriment consisting only of medical expenses, mental health counseling and care expenses, work loss, and funeral expenses.
9. "Extreme mental distress" means a substantial personal disorder of emotional processes, thought, or cognition that impairs judgment, behavior, or ability to cope with the ordinary demands of life.
10. "Fund" means the Crime Victim Compensation Fund.
11. "Funeral expense" means any reasonable charge that is incurred as a direct result of a victim's funeral and cremation or burial.
12. "International terrorism" means as act as defined at 18 U.S.C. 2331.
13. "Jurisdiction" means any county within this state.
14. "Medical expense" means a cost related to medical care attributable to a physical injury resulting from criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331. It includes a cost resulting from damage to prosthetic devices or dental devices. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home, or any other institutional engaged in providing nursing care and related services in excess of a charge for semi-private accommodations, unless accommodations other than semi-private accommodations are medically required.
15. "Mental health counseling and care expense" means a cost related to the assessment, diagnosis, and treatment of an individual's mental and emotional functioning that is required to alleviate extreme mental distress resulting from criminally injurious conduct or an act of terrorism, as defined in 18 U.S.C. 2331. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home, or any other institution engaged in providing nursing care and related services in excess of a charge for semi-private accommodations, unless accommodations other than semi-private accommodations are medically required.
16. "Operational unit" means a public or private agency that is authorized to establish a crime victim compensation program and to receive, evaluate, and present to the Board, under these rules and state law, compensation claims from claimants.
17. "Program" means the Crime Victim Compensation Program.
18. "Subrogation" means the substitution of the state and the operational unit, to the extent that the operational unit used the operational unit's funds, in the place of the claimant to enforce a lawful claim against a collateral source to recover any part of a compensation award.
19. "Work loss" means a reduction in income from work that a victim would have performed if the victim had not been injured or killed, minus any income from substitute work performed by the victim, or income the victim would have earned in available appropriate substitute work that the victim was capable of performing but unreasonably failed to undertake.
20. "Victim" means a person who suffers physical injury, extreme mental distress, or death as a direct result of any of the following:
   a. Criminally injurious conduct that occurs while the person is legally present in the United States;
   b. An act of international terrorism as defined in 18 U.S.C. 2331;
   c. A good faith effort of any person to prevent criminally injurious conduct; or

d. A good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331.

**Historical Note**
Adopted effective December 31, 1986 (Supp. 86-6).
Amended effective October 28, 1994 (Supp. 94-4).
Amended effective June 12, 1997 (Supp. 97-2).

**R10-4-104. Administration of the Fund**

**A.** The Commission shall deposit in the Crime Victim Compensation Fund all monies received under A.R.S. § 12-116.01 and monies from any federal source for compensating victims of crime.

**B.** The Commission shall designate, at the beginning of each state fiscal year, 1 operational unit within a jurisdiction to receive an allocation from the Fund.

**C.** The Commission shall distribute a portion of the Fund to each designated operational unit for expenditure by the Board, based on a uniform base amount to be determined annually by the Commission from staff recommendations derived from an analysis of the prior year expenditure history, with any remaining monies to be divided among jurisdictions on a population basis.

**D.** The Commission shall reserve the lesser of $50,000 or 10% of the Fund to be used in the event of an unforeseen increase of victimization by criminally injurious conduct or acts of international terrorism as defined in 18 U.S.C. 2331, compensation for which cannot be provided by any operational unit.

**E.** If there is an unforeseen increase in victimization by criminally injurious conduct or acts of international terrorism, as defined in 18 U.S.C. 2331, the Commission shall allow a claimant to apply directly to the Commission for compensation based upon criteria established by R10-4-108.

**F.** If any money received from the Commission remains unexpended by the Board at the end of a fiscal year, the operational unit shall return the unexpended money to the Commission which shall redeposit the unexpended money in the Fund for use in the next fiscal year.

**G.** An operational unit that raises additional monies for victim compensation shall submit a written report to the Commission that tells the amount of the additional monies distributed to compensate victims of crime. The Commission shall use the information in the written report to apply for federal matching of the additional monies from the Victim of Crime Act Fund. If the matching monies are received, the Commission shall forward the matching monies to the appropriate operational unit.

**Historical Note**
Adopted effective December 31, 1986 (Supp. 86-6).
Amended effective October 28, 1994 (Supp. 94-4).
Amended effective June 12, 1997 (Supp. 97-2).

**R10-4-105. Statewide operation**

For any portion of the state not served by an operational unit the Commission may operate a compensation program in accordance with these rules or may provide for such program by contract.

**Historical Note**
Adopted effective December 31, 1986 (Supp. 86-6).

**R10-4-106. Operation Unit Requirements**

**A.** A public or private agency seeking designation as an operational unit shall submit to the Commission a letter requesting designation.

**B.** To be eligible to receive designation and funding by the Commission as the operational unit for a jurisdiction, a unit shall agree to:

1. Not use Commission funds or federal funds to supplant funds otherwise available to the program for crime victim compensation;
2. Not discriminate in evaluating claims made by or on behalf of victims and derivative victims of criminally injurious conduct occurring within its jurisdiction who are nonresidents of the jurisdiction and those who are residents of the jurisdiction;
3. Forward to the Board compensation claims of victims and derivative victims of criminally injurious conduct occurring within this state;
4. Forward to the Board compensation claims of victims and derivative victims of criminally injurious conduct occurring within the unit's jurisdiction;
5. Forward to the Board compensation claims of residents of the unit's jurisdiction who are victims or derivative victims of criminally injurious conduct that occurs in another state, the District of Columbia, Puerto Rico, or any other possession or territory of the United States that does not have a crime victim compensation program that meets the requirements of 42 U.S.C. 10602(b)(1)-(6) or of an act of international terrorism as defined in 18 U.S.C. 2331;
6. Provide notice to the Commission of any changes in the unit's procedures before the changes take effect. If the changes are material, the unit shall receive prior written approval from the Commission before instituting the changes;
7. Submit a written quarterly report to the Commission that describes in detail its activities under this rule, including the impact that Commission funds had on the unit. The report shall also include:
   a. The amount and each source of revenue for the unit for victim correspondence;
   b. The total number of claims, awards, denials, pending claims, total amount of awards; and the ethnic background, national origin, age, and sex of each victim;
   c. The average amount of all awards; the number and total amount of awards for federal victims and nonresident victims; the number and amount of awards by type of crime; and the number and amount of awards by type of expense, including medical, mental health counseling, work loss, and funeral;
   d. The type of provider for mental health counseling and care awards including psychiatrist, psychologist, rape crisis center, and community mental health center; the number, amount, and duration of mental health counseling and care awards; and
   e. Sources that referred victims to the unit;
8. Make application forms available to all persons who claim an award as a result of criminally injurious conduct that occurred within the unit's jurisdiction or of an act of international terrorism, as defined in 18 U.S.C. 2331. The application form shall, at a minimum, contain the following information:
   a. The name, address, ethnic background, national origin, age, and sex of the victim or derivative victim of the criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331, and the name and address of the claimant, and the relationship of the claimant to the victim;

b. If the victim is deceased, the name and address of each derivative victim and the extent to which each was dependent upon the victim for financial support;
c. The nature of the criminally injurious conduct or act of international terrorism, as defined in 18 U.S.C. 2331, that is the basis for the claim and the date on which the conduct occurred;
d. The law enforcement agency or officer to whom the criminally injurious conduct or act of international terrorism, as defined in 18 U.S.C. 2331, was reported;
e. The nature and extent of the injuries that the victim sustained from the criminally injurious conduct or act of international terrorism, as defined in 18 U.S.C. 2331, the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where the victim received medical treatment for the injuries, and whether the victim died as a result of the injuries;
f. The economic loss that a claimant sustained as a result of the criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331;
g. The amount of compensation that the victim, a derivative victim, or a claimant has received or is entitled to receive from any collateral source for economic loss that resulted from the criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331, and the name of each collateral source;
h. An affirmation that the claimant is not an illegal alien; is not the offender, accomplice, or facilitator; is not serving or was not serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough; and has not escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough, at the time of the criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331. A unit shall not exclude a person convicted of a federal crime who is delinquent in paying a fine, monetary penalty, or restitution imposed for the offense from receiving benefits unless the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts have issued a written determination that entities administering federal victim programs have access to an accurate and efficient criminal debt payment tracking system; and
i. A release authorizing the unit's investigative agent to obtain any report, document, or information that relates to the determination of the claim for an award of compensation that is requested in the application.

9. Comply with all civil rights requirements;
10. Ensure that it monitors, investigates, and substantiates each claim for compensation before forwarding the claim to the Board to make an award; and
11. Provide other information and assurances the Commission may require to carry out any of its duties or responsibilities.

**Historical Note**
Adopted effective December 31, 1986 (Supp. 86-6).
Amended effective December 12, 1990 (Supp. 90-4).
Amended effective October 28, 1994 (Supp. 94-4).
Amended effective June 12, 1997 (Supp. 97-2).

**R10-4-107. Crime Victim Compensation Board**

**A.** Each operational unit shall have established a Crime Victim Compensation Board, which shall consist of an odd number and not fewer than three members to be appointed by the Chairman of the Commission from a list submitted by the operational unit. Members of the Board shall receive no compensation for their services.
**B.** The term of office of each appointed member shall be three years; except that of those members first appointed, approximately one-third shall be appointed for a three-year term, one-third for a two-year term, and one-third for a one-year term. All vacancies, except through the expiration of term, shall be filled for the unexpired term only, to be made by the Chairman of the Commission from a list submitted by the operational unit.
**C.** The majority of the membership of the Board constitutes a quorum for the transaction of business. The Board shall elect from among its membership a chairman and such other officers as it deems necessary, to serve for such terms as the Board determines.
**D.** The Board shall make compensation awards in accordance with the requirements of these rules and perform any other acts necessary for the operation of the program.

**Historical Note**
Adopted effective December 31, 1986 (Supp. 86-6).
Amended effective October 28, 1994 (Supp. 94-4).

**R10-4-108. Award Criteria**

**A.** An operational unit's Board shall decide, based upon the investigative agent's findings, whether to make an award and, if so, the terms and amount of the award within 60 days of receipt of the application by the operational unit except where due cause exists. The Board shall inform the applicant of the Board's decision in writing within 5 days of the decision.
**B.** The Board shall not make a compensation award unless it determines that:
1. Criminally injurious conduct or act of international terrorism, as defined in 18 U.S.C. 2331, was committed;
2. The criminally injurious conduct or act of international terrorism, as defined in 18 U.S.C. 2331, directly resulted in physical injury to, extreme mental distress to, or death of the victim;
3. The criminally injurious conduct or act of international terrorism, as defined in 18 U.S.C. 2331, was reported to the appropriate law enforcement authorities within 72 hours after its discovery unless good cause is shown to justify a delay; and
4. The application for a compensation award was submitted to the operational unit with 1 year of the discovery of the crime or act of international terrorism, as defined in 18 U.S.C. 2331, unless good cause is shown to justify a delay.

**C.** The Board shall make compensation awards from the Fund only for the following:
1. Medical expenses attributable to a victim's physical injury or death resulting from criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331;
2. Work loss attributable to a victim's physical injury, extreme mental distress, or death resulting from criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331, provided the compensation award for work loss does not exceed an amount equal to 40 hours per week at the current federal minimum wage standard for each week of work loss to the maximum allowable under subsection (D)(1). A com-

pensation award for work loss attributable to a victim's death resulting from criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331, may be made to a surviving spouse, child, sibling, or parent of the victim if the Board determines the death resulted in a loss of support from the victim to the spouse, child, sibling, or parent provided the award for work loss does not exceed an amount equal to 40 hours per week at the current federal minimum wage standard for each week of work loss to the maximum allowable under subsection (D)(1). A compensation award to the parent or guardian of a minor victim may be made for work loss attributable to transporting or accompanying the victim to a medical or mental health counseling and care visit, provided the award for work loss does not exceed an amount equal to 40 hours per month at the current federal minimum wage standard for each month of work loss to the maximum allowable under subsection (D)(1);

3. Funeral expenses attributable to a victim's death resulting from criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331, provided the compensation award for funeral expenses does not exceed $2,500; and
4. Mental health counseling and care expenses attributable to a victim's or derivative victim's extreme mental distress resulting from criminally injurious conduct or an act of terrorism, as defined in 18 U.S.C. 2331, provided the counseling and care does not exceed a 12-month period starting with the 1st treatment. Mental health counseling and care for derivative victims shall be included as a portion of the maximum award.

**D.** The Board shall not make a compensation claim of a claimant to the extent that it exceeds:
1. Ten thousand dollars in the aggregate for a victim and any derivative victim; and
2. The amount existing in the Fund and not committed to other compensation awards, at the time the Board makes the compensation award determination.

**E.** The Board shall deny or reduce a compensation award to a claimant to the extent that:
1. In the event of an insufficiency of funds in a given year, an otherwise valid claim may be denied or it may be extended for consideration in the next fiscal year;
2. The degree of responsibility for the cause of the injury or death was attributable to the victim either through negligence or through intentional or knowing unlawful conduct, that substantially provoked or aggravated the incident giving rise to the injury;
3. The claimant has not fully cooperated with appropriate law enforcement agencies. In determining the extent of any non-cooperation, the following criteria shall be used:
   a. If the claimant failed to assist in the prosecution of a person who engaged in criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331, or failed to appear as a witness, the claim for a compensation award shall be denied;
   b. If the claimant initially decided not to assist in the prosecution but subsequently decided to assist in the prosecution and this causes a person who engaged in criminally injurious conduct or an act of international terrorism, as defined in 18 U.S.C. 2331, to escape prosecution or directly negatively affects the prosecution, the claim for a compensation award shall be denied;
   c. If law enforcement authorities indicate that the claimant was reluctant to give information pertaining to the criminally injurious conduct or act of international terrorism, failed to appear when requested without good cause, gave false or misleading information, or attempted to avoid law enforcement authorities, the award shall be reduced or denied;
   d. If the claimant demonstrates that the claimant's failure to cooperate was due to a compelling health or safety risk, the Board shall make a full award within the constraints in subsection (D).

**F.** If there are insufficient funds with which to make a compensation award in a given year, the Board may deny or extend an otherwise valid claim for consideration in the next fiscal year.

**G.** The operational unit shall not provide funds to pay any attorney's fees incurred by the claimant.

**H.** The operational unit may use funds to pay administrative costs to the extent authorized by the Commission.

**I.** The operational unit, in its discretion, may directly compensate the claimant, or pay providers, or both.

**Historical Note**
Adopted effective December 31, 1986 (Supp. 86-6).
Amended effective October 28, 1994 (Supp. 94-4).
Amended effective June 12, 1997 (Supp. 97-2).

**R10-4-109. Hearings and Appeals**

The Board, in its discretion, may conduct a hearing upon any application submitted to it.

1. Any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than ten days after service of the decision, a written request for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this paragraph, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last known residence or place of business.
2. A request for rehearing under this rule may be amended at any time before it is ruled upon by the Board. The Board may require the filing of additional written explanation of the issue raised in the request and may provide for oral argument.
3. A rehearing or review of the decision may be granted for any of the following causes materially affecting the requesting party's rights:
   a. Irregularity in the administrative proceedings of the board or its operational unit, or any order of abuse or discretion, whereby the requesting party was deprived of a fair hearing;
   b. Misconduct of the Board;
   c. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing.
   d. Error in the admission or rejection of evidence or other errors of law occurring at the hearing;
   e. That the decision is not justified by the evidence or is contrary to the rules.
4. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in paragraph (3). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted and the hearing shall cover only those matters so specified.
5. Not later than ten days after a decision is rendered, the Board may, on its own initiative, order a rehearing or review of its decision for any reason for which it might

have granted a rehearing on motion of a party. After giving the party or parties notice and an opportunity to be heard on the matter, the Board may grant a request for rehearing for a reason not stated in the request. In either case, the order granting such a rehearing shall specify the grounds therefor.

6. For purposes of this Section, the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.
7. To the extent that the provisions of this rule are in conflict with the provisions of any statute providing for rehearing or decisions of the Board, such statutory provisions shall govern.

**Historical Note**
Adopted effective December 31, 1986 (Supp. 86-6).
Amended effective October 28, 1994 (Supp. 94-4).

**R10-4-110. Emergency Awards**

Each operational unit may grant an emergency award, if there is a reasonable likelihood that the person is or will be eligible to be a claimant and serious hardship will result to the person if immediate payment is not made; provided, however, that:

1. The amount of such emergency award shall not exceed $500; and
2. The amount of such emergency award shall be deducted from any final award made to the claimant.

**Historical Note**
Adopted effective December 31, 1986 (Supp. 86-6).
Amended effective October 28, 1994 (Supp. 94-4).

**R10-4-111. Subrogation Agreement**

**A.** As a condition to receipt of a compensation award, the claimant shall sign a subrogation agreement which provides that the state and the operational unit, to the extent that the operational unit used its own funds, are entitled to all of the claimant's rights to receive or recover benefits or advantages up to the amount of the award for economic loss for which an award was made from a collateral source that is or would be available to the victim or claimant. The claimant may still sue the offender for any damages or injuries caused by the offender's criminally injurious conduct and not compensated for by an award. The claimant may also join with the Attorney General, or the operational unit, or both as co-plaintiff in any action against the offender or a third party.

**B.** The agreement shall provide that if payment of an award is made to someone other than the claimant, the state and operational unit are subrogated to all of the payee's rights to receive or recover benefits or advantages for allowable expenses for which an award payment was made, from a collateral source that is or would be available to the victim, claimant, or payee.

**C.** The agreement shall provide that the state shall have first right of subrogation in any matters arising under this Section. All monies that are collected by the state pursuant to this right of subrogation as provided in this Section shall be deposited in the Fund.

**Historical Note**
Adopted effective December 31, 1986 (Supp. 86-6).
Amended effective October 28, 1994 (Supp. 94-4).

## ARTICLE 2. CRIME VICTIM ASSISTANCE PROGRAM

**R10-4-201. Short title**

The provisions of these rules shall be known and cited as the "Arizona Crime Victim Assistance Program".

**Historical Note**
Adopted effective December 22, 1986 (Supp. 86-6).

**R10-4-202. Purpose**

The Commission, in recognition of the civic and moral duty of victims of crime to cooperate fully with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizens' cooperation to state and local law enforcement efforts and the general effectiveness of the criminal justice system of this State, to ensure that victims of crime are treated with dignity, respect, courtesy and sensitivity in all their dealings with the criminal justice system, shall allocate the public resources available to establish, maintain and support qualified programs that assist victims of crime.

**Historical Note**
Adopted effective December 22, 1986 (Supp. 86-6).
Amended effective October 28, 1994 (Supp. 94-4).

**R10-4-203. Definitions**

In these rules:

1. "Commission" means the Arizona Criminal Justice Commission, as established by A.R.S. § 41-2404.
2. "Crime" means conduct, whether completed or preparatory, committed in this state, which if engaged in by an accountable person, would constitute a crime as defined by the laws of this state whether or not the person committing the act is convicted; "crime" is not an act arising out of the ownership, maintenance or use of a motor vehicle, aircraft, or water vehicle except when a person acts intentionally, knowingly recklessly, or with criminal negligence, to cause physical injury, threat of physical injury, or death.
3. "Financial support from other sources" means that not less than 1/4 of the applicant program's budget (including in-kind contributions) for the fiscal year that funds are being applied for is from sources other than the Fund.
4, "Fund" means the Arizona Crime Victim Assistance Fund.
5. "Immediate family" means spouses, children, parents, stepparent, siblings, stepbrother, stepsister, grandparents, grandchildren and guardians of the victim.
6. "Qualified program" is a program approved by or affiliated with a prosecuting attorney's office or other law enforcement agency which meets the requirements of R10-4-205 of these rules.
7. "Subrogation" means the substitution of the state, and the qualified program to the extent that the qualified program used financial support from other sources, in the place of the victim to enforce a lawful claim against a third party to recover the cost of the services provided.
8. "Substantial financial support from other sources" means that an amount at least equal to the financial support given to the program by the Commission for the fiscal year that funds are being applied for.
9. "Victim" means any natural person against whom any crime is perpetrated and includes the immediate family of the natural person.

**Historical Note**
Adopted effective December 22, 1986 (Supp. 86-6).
Amended effective October 28, 1994 (Supp. 94-4).

**R10-4-204. Administration of the Fund**

**A.** The Commission shall deposit all funds received pursuant to A.R.S. Title 31, Chapter 3, Article 4, §§ 31-466(A) and 31-411(F) and any federal monies received for victims assistance in the Crime Victim Assistance Fund.

**B.** An application for designation and funding by the Commission as a qualified program shall be on a form furnished by the Commission. The application shall be written and show:

1. The amount of Fund monies requested;
2. A detailed account of how the monies will be spent;
3. How the program intends to and will comply with R10-4-205; and
4. Whether the program intends to charge for its services and if so how much.

**C.** A qualified program may receive a portion of the Fund based on an annual policy established by the Commission which promotes statewide distribution and the effective and efficient use of the monies.

**D.** Should any money received from the Commission remain unexpended in a qualified program at the end of the fiscal year, such money shall be returned to the Commission and redeposited in the Fund for use by the Commission in the next fiscal year.

**Historical Note**
Adopted effective December 22, 1986 (Supp. 86-6).
Amended effective October 28, 1994 (Supp. 94-4).

**R10-4-205. Program Requirements**

A victim assistance program is qualified to receive funding from the Commission if the following requirements are met:

1. The program does not use Commission funds or federal funds to supplant those funds otherwise available to the program for victim assistance;
2. The program is operated by a public agency or private/nonprofit organization, or a combination thereof, that provides services to victims;
3. If it is an existing program, the program has a record of providing effective services to victims of crime and receiving substantial financial support from sources other than the Fund. In determining whether such services have been effective the Commission shall consider how long the program has been in operation, and whether an analysis of its activities shows that it achieves its intended results in a cost effective manner;
4. If if is a new program, the program demonstrates that there is a specific need for the services to victims, that such need is not currently being met, and that it has financial support from sources other than the Fund;
5. The program utilizes volunteers to the extent that such program volunteers contribute to the effective and efficient provision of services to victims;
6. The program promotes within the community served coordinated public and private efforts to aid victims;
7. The program assists victims of crime in seeking available victim compensation benefits;
8. The program complies with all applicable civil rights requirements;
9. The program files a quarterly report with the Commission. Such report shall contain a financial report detailing Crime Victim Assistance fund monies received and required matching fund expenditures on a form supplied by the Commission;
10. A program shall file an annual report with the Commission. Such report shall contain the following information concerning expenditures of Crime Victim Assistance funds and all other program funds;
    a. The number of victims served during the reporting period, a list of services provided, and the number of times each service was provided;
    b. The ethnic background, age, and sex of each victim served;
    c. Staff information: the number of hours provided by professionals, paraprofessionals, clerical workers, volunteers, and interns; and
    d. A brief narrative assessment of victim's reactions to services provided, including illustrative case histories;
11. The program shall provide such other information and assurances related to the purpose of this rule as the Commission may reasonably require to satisfy state and federal requirements.

**Historical Note**
Adopted effective December 22, 1986 (Supp. 86-6).
Amended effective October 28, 1994 (Supp. 94-4).

**R10-4-206. Services**

**A.** Funding may be provided to qualified programs for any of the following kinds of services:

1. Crisis intervention services that meet the urgent emotional or physical needs of victims, which may include a 24-hour hotline providing around-the-clock counseling or referral for crime victims.
2. Emergency services that:
    a. Provide temporary shelter for victims who cannot safely remain in their current lodgings;
    b. Provide petty cash for meeting immediate needs related to transportation, food, shelter, and other necessities; or
    c. Offer such measures as the temporary repair of locks and windows to prevent the immediate reburglarization of a home or apartment.
3. Support services, including:
    a. Follow-up counseling for resolving practical problems created by the victimization experience;
    b. Acting on the victim's behalf in dealing with other social service and criminal justice agencies;
    c. Assistance in obtaining the return of property being kept as evidence, as soon as practicable;
    d. Acting on the victim's behalf in dealing with the victim's landlords or employers; and
    e. Referral to other sources of assistance as needed.
4. Court-related services, including:
    a. Direct services or petty cash payments that assist victims in participating in criminal justice proceedings, including transportation to court, child care, meals, and parking expenses;
    b. Advocate services including escorting victims to criminal justice-related interviews or Court proceedings and assistance in accessing temporary protection services;
5. Notification services, including:
    a. Notification to the victim of significant developments in the investigation and adjudication of the case that facilitates victim input and cooperation.
    b. Notification that a court proceeding to which such victim has been subpoenaed will not go on as scheduled, in order to save the victim an unnecessary trip to court, and
    c. Notification of the final disposition of the case.
6. Training for those persons, salaried or volunteer staff, who provide direct services and/or advocate services to victims, which may include personnel employed by criminal justice, social services, mental health, or related agencies.
7. Printing and distribution of brochures and similar announcements describing the direct services available and how to obtain a program's assistance and similar public notification efforts intended to recruit volunteers.

**B.** The qualified program shall not use Fund monies for the following activities:

1. Crime prevention efforts, other than those aimed at providing specific emergency help after a victimization incident;
2. General public relations programs;
3. Advocacy for particular legislative or administrative reforms;
4. General criminal justice agency improvements;
5. Programs where victims are not the primary beneficiaries; or
6. Management training and training for persons who do not provide direct services to victims.
7. Victim Compensation as provided pursuant to R10-4-101 et seq.

**Historical Note**
Adopted effective December 22, 1986 (Supp. 86-6). Amended effective October 28, 1994 (Supp. 94-4).

**R10-4-207. Subrogation Agreement**

**A.** As a condition to receipt of victim assistance exceeding $100 in direct financial aid, the victim shall sign a subrogation agreement which provides that the state and the qualified program, to the extent that the qualified program used financial support from other sources, are entitled to the victim's rights to receive or recover benefits for which a service was provided, except when services are provided directly by the qualified program, provided that neither the state nor the qualified program shall be entitled to receive benefits in excess of the benefits provided to the victim by the state or the qualified program. The victim may still sue the offender for any damages or injuries caused by the offender's criminally injurious conduct for which services were not provided. The victim may also join with the Attorney General, or the qualified program, or both as co-plaintiff in any action against the offender.

**B.** A subrogation agreement shall also be required if payment from the Fund is to be made to the provider of the services. The state and qualified program are subrogated to all of the payee's rights to receive or recover benefits or advantages for services which were provided.

**C.** The agreement shall provide that the state shall have first right of subrogation in any matters arising under this Section. All monies that are collected by the state pursuant to this right of subrogation as provided in this Section shall be deposited in the Fund.

**Historical Note**
Adopted effective December 22, 1986 (Supp. 86-6). Amended effective October 28, 1994 (Supp. 94-4).

## ARTICLE 3. REPEALED

**R10-4-301. Repealed**

**Historical Note**
Adopted effective September 11, 1986 (Supp. 86-5). R10-4-301 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1).

**R10-4-302. Repealed**

**Historical Note**
Adopted effective September 11, 1986 (Supp. 86-5). R10-4-302 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1).

**R10-4-303. Repealed**

**Historical Note**
Adopted effective September 11, 1986 (Supp. 86-5). R10-4-303 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1).

**R10-4-304. Repealed**

**Historical Note**
Adopted effective September 11, 1986 (Supp. 86-5). R10-4-304 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1).

**R10-4-305. Repealed**

**Historical Note**
Adopted effective September 11, 1986 (Supp. 86-5). R10-4-305 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1).

## ARTICLE 4. DRUG AND GANG ENFORCEMENT ACCOUNT ADMINISTRATIVE PROGRAM

**R10-4-401. Definitions**

In these rules:

1. "Account" means the Drug and Gang Enforcement Account as established by A.R.S. § 41-2402.
2. "Commission" means the Arizona Criminal Justice Commission, as established by A.R.S. § 41-2404.
3. "Task force" means the Drug and Gang Enforcement Task Force, as established by A.R.S. § 41-2406.

**Historical Note**
Adopted as an emergency effective February 22, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Adopted without change as a permanent rule effective July 18, 1988 (Supp. 88-3). Amended effective October 28, 1994 (Supp. 94-4).

**R10-4-402. Application**

The Commission shall require a written submittal from each applicant for Account monies showing all of the following information:

1. That the request for monies is consistent with the purposes for which the account was established;
2. The goals sought to be achieved by the use of Account monies, the specific supporting objectives, and a proposed method for accurately measuring and evaluating the degree of success in achieving these objectives;
3. The amount of agency funds and resources the applicant plans to allocate to the project;
4. The amount of account monies requested;
5. A detailed account of how the monies will be spent to enhance the project; and

6. The anticipated fiscal and operational impact that the receipt of Account monies is projected to have on state and local agencies.

**Historical Note**
Adopted as an emergency effective February 22, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Adopted without change as a permanent rule effective July 18, 1988 (Supp. 88-3). Amended effective October 28, 1994 (Supp. 94-4).

**R10-4-403. Application process; approval by the Commission**

**A.** The Commission shall forward the written applications to the Task Force for review and recommendations.

**B.** The Commission shall review the recommendations of the Task Force, together with any of the written submittals which the Commission may designate.

**C.** After such review, the Commission may:
1. Request additional information and/or modified applications from the Task Force and/or the applicant;
2. Vote to approve, or disapprove, in whole or in part, applications which have been submitted.

**Historical Note**
Adopted as an emergency effective February 22, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Adopted without change as a permanent rule effective July 18, 1988 (Supp. 88-3).

**R10-4-404. Annual Reports**

**A.** Within 90 days after the end of each fiscal year, each grantee shall submit a written report to the Commission which shall forward a copy to the Task Force containing all of the following information:
1. The amount of Account monies held by the grantee at the beginning of the fiscal year;
2. The amount of Account monies distributed to the grantee by the Commission during the fiscal year;
3. The amount of Account monies which were expended in relation to the specific goals sought to be achieved by the grantee;
4. An analysis of the effectiveness and efficiency with which the grantee used Account monies to meet its stated objectives during the fiscal year, including a specific assessment of the degree to which efforts to deter, investigate, prosecute, adjudicate, and punish drug offenders and members of criminal street gangs have been enhanced;
5. The amount and disposition of assets seized, fine monies generated, and other financial benefits generated by the grantee, as a result of the use of Account monies; and
6. Such other information as the Commission may request in compliance with requests from the Federal Government for information related to the expenditures of federal grant monies from the Account.

**B.** The Commission shall compile this information in the annual report required under A.R.S. § 41-2405(A)(12) and forward it to the Task Force for review and recommendations to the Commission.

**Historical Note**
Adopted as an emergency effective February 22, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Adopted without change as a permanent rule effective July 18, 1988 (Supp. 88-3). Amended effective October 28, 1994 (Supp. 94-4).